Gc
929.2
F7759f
v.1
2016547

M. L.

REYNOLDS HISTORICAL
GENEALOGY COLLECTION

ALLEN COUNTY PUBLIC LIBRARY
3 1833 01241 2737

Digitized by the Internet Archive
in 2010 with funding from
Allen County Public Library Genealogy Center

http://www.archive.org/details/worksofsirjohnfo01fort

4496

THE WORKS OF

SIR JOHN FORTESCUE, KNIGHT,

CHIEF JUSTICE OF ENGLAND AND LORD

CHANCELLOR TO KING HENRY

THE SIXTH.

NOW FIRST COLLECTED AND ARRANGED BY

THOMAS (FORTESCUE) LORD CLERMONT.

V.1

LONDON:

Printed for Private Distribution.

1869.

034

78 8318 6

2016547

Rec'd Sept 27-1978

CHISWICK PRESS: PRINTED BY WHITTINGHAM AND WILKINS,
TOOKS COURT, CHANCERY LANE.

CONTENTS OF THIS VOLUME.

PAGE

PREFACE xxiii

LIST OF ILLUSTRATIONS xxvii

LIFE OF SIR JOHN FORTESCUE 1

APPENDIX TO SAME 53

DE NATURA LEGIS NATURÆ. PARS PRIMA.

THE SAME TRANSLATED INTO ENGLISH.

INTRODUCTION 63

THE SAME IN ENGLISH 187

CHAP. I. Here the Author ſhows the motive of his Work.

Latin 65

Engliſh 191

CHAP. II. Although this be a queſtion of law the Author refuſes not the aid of other faculties.

Latin 66

Engliſh 192

CHAP. III. The ſolution of this queſtion calls for a law other than the Canon or the Civil.

Latin 66

Engliſh 192

CHAP. IV. The Law of Nature alone governed the World until the Law given by the hand of Moſes.

Latin 66

Engliſh 193

CHAP. V. The Law of Nature excels all human laws.

Latin 67

Engliſh 193

CHAP. VI. Melchiſedech was made King under the Law of Nature alone.

Latin 68

Engliſh 195

		PAGE
CHAP. VII.	Nembroth was the firſt who had a kingdom, and yet he was not a king	
	Latin	69
	Engliſh	196
CHAP. VIII.	Belus was the firſt king ſo named, and reigned in Babylon, the capital of the Aſſyrians.	
	Latin	71
	Engliſh	198
CHAP. IX.	It is doubted whether before the Deluge there were kings in Enoch which Cain built.	
	Latin	71
	Engliſh	198
CHAP. X.	Here the Author ſhoweth that all ſuperior kingdoms were eſtabliſhed under the Law of Nature, and ought to be poſſeſſed by the ſame.	
	Latin	72
	Engliſh	200
CHAP. XI.	Firſt Objection.	
	Latin	73
	Engliſh	201
CHAP. XII.	Second Objection.	
	Latin	74
	Engliſh	202
CHAP. XIII.	Anſwer to the firſt cauſe of this war. But firſt the Author throws together the Motives and the Cauſe.	
	Latin	74
	Engliſh	202
CHAP. XIV.	Anſwer to the firſt Motive.	
	Latin	75
	Engliſh	203
CHAP. XV.	The concluſion, which diſproves the firſt objection.	
	Latin	76
	Engliſh	204
CHAP. XVI.	Anſwer to the ſecond cauſe of the war above mentioned. But the Author firſt diſtinguiſhes the right of a king reigning royally, from the right of a king reigning politickly and royally (*politicè et regaliter*).	
	Latin	77
	Engliſh	205
CHAP. XVII.	Next he compares the Law of the King with the Law of Nature, and ſhows the difficulty of this diſcuſſion.	
	Latin	78
	Engliſh	207

PAGE

CHAP. XVIII. The Law of Nature worked out the kingly ſtation in its commencement, although the unjuſt made the firſt beginnings of that rank.
Latin 80
Engliſh 208

CHAP. XIX. The Law of Nations makes not laws for the faithful, but often gives names to their laws.
Latin 81
Engliſh 210

CHAP. XX. The Law of Nature created contracts among men, and was not changed by man's ſin.
Latin 82
Engliſh 211

CHAP. XXI. The evil which might befall the people of Iſrael through the law of the king being diſcloſed, the Author ridicules the compariſon above mentioned.
Latin 83
Engliſh 212

CHAP. XXII. A King ruling royally, and a King ruling politickly, are equally likened unto God.
Latin 84
Engliſh 213

CHAP. XXIII. Advice to him who reigneth royally, to reign alſo politickly.
Latin 85
Engliſh 214

CHAP. XXIV. He who reigns politickly is here adviſed to govern in certain caſes royally.
Latin 85
Engliſh 214

CHAP. XXV. Here are explained certain caſes in which a political ruler will of neceſſity govern royally.
Latin 86
Engliſh 215

CHAP. XXVI. A King ruling politickly is of equal power and liberty with a King governing royally.
Latin 87
Engliſh 216

CHAP. XXVII. The right of the King is the power of the King, which when it hath done aught contrary to the Law of Nature, hath never eſcaped puniſhment.
Latin 89
Engliſh 218

CHAP. XXVIII. Concerning unjuſt laws and tyrants.
Latin 90
Engliſh 220

		PAGE
CHAP. XXIX.	Epilogue of the diſcuſſion between the Law of Nature and the Law of the King.	
	Latin	90
	Engliſh	220
CHAP. XXX.	Difference between "Jus," and "Lex."	
	Latin	92
	Engliſh	222
CHAP. XXXI.	An examination of what the Law of Nature is.	
	Latin	93
	Engliſh	223
CHAP. XXXII.	How we ſhould caſt back the maliciouſneſs of ſuch as cavil at what hath been ſaid.	
	Latin	94
	Engliſh	225
CHAP. XXXIII.	The reaſon why the Author inveſtigates the Law of Nature.	
	Latin	96
	Engliſh	227
CHAP. XXXIV.	How to the man alone was promiſed the dominion of the world before man was created.	
	Latin	96
	Engliſh	227
CHAP. XXXV.	Divine Providence ordained at once the Prelacy of the world and juſtice.	
	Latin	98
	Engliſh	229
CHAP. XXXVI.	Juſtice and the Law of Nature are of one quality, and of accidental eſſence.	
	Latin	99
	Engliſh	231
CHAP. XXXVII.	Law is born of Juſtice, as the Son from the Father in things divine.	
	Latin	100
	Engliſh	232
CHAP. XXXVIII.	How the Law of Nature was created.	
	Latin	102
	Engliſh	234
CHAP. XXXIX.	It is here ſhown how Juſtice remained in man after that man had abandoned her.	
	Latin	103
	Engliſh	235
CHAP. XL.	How the name of Juſtice hath a likeneſs to the name of Man.	
	Latin	104
	Engliſh	236

PAGE

CHAP. XLI. See how original Juſtice differs from natural Juſtice.
Latin 105
Engliſh 237

CHAP. XLII. Wherefore the Law of Nature is called Divine, and daughter of the Divine Law.
Latin 106
Engliſh 239

CHAP. XLIII. As the Moon is to the Sun, ſo are Human Laws to the Divine Law.
Latin 108
Engliſh 241

CHAP. XLIV. In this Chapter we ſeek and ſhow what are the ends of Divine Law.
Latin 110
Engliſh 243

CHAP. XLV. The ends of the intention acting through the intellect are two.
Latin 112
Engliſh 245

CHAP. XLVI. Here the writer ſhows by what kind of ſubjection the Law of Nature is ſubſtituted for the Divine Law.
Latin 113
Engliſh 246

CHAP. XLVII. The End.
Latin 114
Engliſh 247

CHAP. XLVIII. Continuation of this Treatiſe to that which follows.
Latin 114
Engliſh 248

DE NATURA LEGIS NATURÆ. PARS SECUNDA.

THE SAME TRANSLATED INTO ENGLISH.

CHAP. I. Juſtice is choſen and conſtituted judge in the propoſed caſe.
Latin 115
Engliſh 249

CHAP. II. The King's Daughter's title to the Crown.
Latin 116
Engliſh . . . . . 2[illegible]

CHAP. III. Reply of the King's Grandſon to the firſt allegation of the King's Daughter.
Latin 117
Engliſh 251

PAGE

CHAP. IV. The Grandſon's reply to the ſecond allegation of the King's Daughter.
Latin 118
Engliſh 252

CHAP. V. Women had never the right of ſucceeding in the kingdoms of Iſrael and Judah.
Latin 119
Engliſh 254

CHAP. VI. The Grandſon's title to his Grandfather's kingdom.
Latin 120
Engliſh 255

CHAP. VII. The propoſition of the King's Brother.
Latin 121
Engliſh 256

CHAP. VIII. He ſhows, in the firſt place, the reaſon why a Woman ſucceeds not to a kingdom as to any other property.
Latin 121
Engliſh 257

CHAP. IX. Here he makes a further diſcloſure of the ſaid cauſe, and proves that the King's daughter has no ground of complaint.
Latin 123
Engliſh 259

CHAP. X. He now proves that the Son cannot ſucceed to the kingdom by his Mother's right.
Latin 124
Engliſh 260

CHAP. XI. He here ſhows that Chriſt was not King of the Jews by right of his Mother.
Latin 125
Engliſh 261

CHAP. XII. The title of the King's Brother to the kingdom which is claimed.
Latin 127
Engliſh 264

CHAP. XIII. Replication of the King's Daughter.
Latin 128
Engliſh 264

CHAP. XIV. The King's Daughter here ſets in order the proceſs by which ſhe intends to advance.
Latin 129
Engliſh 265

CHAP. XV. She now refutes the reaſons which would prevent a female reign.
Latin 129
Engliſh 266

PAGE

CHAP. XVI. The King's Grandſon firſt ſhows how he lays claim to his Grandfather's kingdom as the heir of his Grandfather, and not as the heir of his Mother.
Latin 130
Engliſh 268

CHAP. XVII. The Son intends to confirm only his own aſſertions.
Latin 131
Engliſh 269

CHAP. XVIII. He here ſhows how Woman was created ſo as always to be ſubject to Man.
Latin 131
Engliſh 269

CHAP. XIX. He here ſhows what is meant by Man's being made after the image of God.
Latin 134
Engliſh 272

CHAP. XX. Epilogue, ſumming up the things which have been ſaid in the laſt two Chapters.
Latin 135
Engliſh 273

CHAP. XXI. The Woman is by nature ſubject to the Man.
Latin 136
Engliſh 274

CHAP. XXII. Examples which merely relate facts cannot prove that Women ought to reign.
Latin 136
Engliſh 275

CHAP. XXIII. Only Women who are ſubject to Men can govern Men.
Latin 138
Engliſh 277

CHAP. XXIV. The natural infirmities of Women do not exclude them from governing, but ſhow the cauſe why they are excluded.
Latin 139
Engliſh 278

CHAP. XXV. That a Woman cannot reign ſupreme is pointed out by the Divine ſentence.
Latin 140
Engliſh 279

CHAP. XXVI. Wherefore the ſentence of the Divine Law muſt now be traced.
Latin 141
Engliſh 280

CHAP. XXVII. How the Divine Law approves the ſentence of the Law of Nature.
Latin 143
Engliſh 282

PAGE

CHAP. XXVIII. Divine more ſtrongly than Human Law excludes Woman from a kingdom.
Latin 143
Engliſh 283

CHAP. XXIX. By the Law of Nature alone can the propoſed queſtion be perfectly ſolved.
Latin 144
Engliſh 285

CHAP. XXX. The Divine judgment does not allow a Woman to reign ſupreme *de jure*, but the Law of Nature does not permit her to to reign *de facto*.
Latin 146
Engliſh 287

CHAP. XXXI. Firſtly the King's Brother refutes the ſimilitudes introduced by the Grandſon.
Latin 147
Engliſh 288

CHAP. XXXII. The caſe which the Grandſon laid down is not like his own title.
Latin 148
Engliſh 290

CHAP. XXXIII. In what manner the Right of Inheritance firſt aroſe.
Latin 149
Engliſh 291

CHAP. XXXIV. He here ſhows what Deſcent is, and what is the nature of its progreſs.
Latin 150
Engliſh 292

CHAP. XXXV. The King's Brother here ſhows what are the ſteps of deſcent.
Latin 151
Engliſh 293

CHAP. XXXVI. There is nothing which doth not depend upon the firſt cauſe through an unbroken chain of cauſes.
Latin 153
Engliſh 295

CHAP. XXXVII. The King's Daughter cannot be the cauſe or medium by which his Kingdom deſcends to his Grandſon
Latin 154
Engliſh 297

CHAP. XXXVIII. He here confirms by examples what he proved above by reaſon.
Latin 155
Engliſh 298

CHAP. XXXIX. The judgment paſſed upon our firſt parent proves that ſhe was not ſubject by the Law of Nature.
Latin 157
Engliſh 300

PAGE

CHAP. XL. Only married women are by the Divine Sentence ſubject to men.
Latin 158
Engliſh 301

CHAP. XLI. The Son here ſhows that his Mother's firſt aſſertion has been completely anſwered by her Uncle.
Latin 158
Engliſh 302

CHAP. XLII. The ſubjection of the Woman, after ſhe had ſinned, differed from her natural ſubjection in quality, not in ſubſtance.
Latin 159
Engliſh 302

CHAP. XLIII. Not only married, but ſingle women are ſubjected to men.
Latin 160
Engliſh 304

CHAP. XLIV. He here ſhows that the Divine ſentence is repugnant to his Mother's opinion.
Latin 161
Engliſh 306

CHAP. XLV. In what way the dominion, which on account of ſin was given to Man, differs from the dominion which he had in the time of innocence.
Latin 162
Engliſh 306

CHAP. XLVI. Woman is ſubject to the Man as long as ſhe obeys him in reſpect of any kind of dominion.
Latin 163
Engliſh 308

CHAP. XLVII. In the firſt place the Grandſon ſcorns the laws of foreign Kings.
Latin 165
Engliſh 310

CHAP. XLVIII. The Grandſon here introduces the Civil Law againſt the replications of his Great-Uncle.
Latin 165
Engliſh 311

CHAP. XLIX. And firſt he proves that laws all and ſingular are ſeaſonable in this conflict.
Latin 166
Engliſh 12

CHAP. L. He here ſhows how unlike is the caſe juſt laid down to the caſe in diſpute.
Latin 167
Engliſh 313

PAGE

CHAP. LI. A law promulgated by Man doth not prove that the Law of Nature points the ſame way.
Latin 168
Engliſh 314

CHAP. LII. The Civil Law prohibits the Grandſon by a Daughter from ſucceeding to his Grandfather in honour and dignity.
Latin 169
Engliſh 315

CHAP. LIII. The Civil Law doth not allow Women to reign, for reaſons here aſſigned.
Latin 170
Engliſh 316

CHAP. LIV. The Civil Law does not ſolve the queſtion propoſed, but renders its ſolution clearer.
Latin 171
Engliſh 318

CHAP. LV. As the Civil ſo alſo does the Canon Law reject Women from the office of reigning.
Latin 172
Engliſh 318

CHAP. LVI. The Apoſtle approves of the things which had been previouſly ſanctioned by the Law of Nature.
Latin 172
Engliſh 319

CHAP. LVII. The Canon Law, even more ſtrongly than the Civil Law, rejects Women from the kingly office.
Latin 173
Engliſh 320

CHAP. LVIII. Concluſion of the pleadings, and the Judge's way of preparing himſelf to pronounce ſentence.
Latin 174
Engliſh 321

CHAP. LIX. The Judge firſt ſhows how the Woman is ſubordinated to the Man in the order of the univerſe.
Latin 174
Engliſh 322

CHAP. LX. What was the nature of the Man's pre-eminence in the time of his innocence.
Latin 176
Engliſh 323

CHAP. LXI. In what way the pre-eminence of Man upon earth reſembled the pre-eminence of an angel in heaven.
Latin 176
Engliſh 324

PAGE

CHAP. LXII. In what virtues the male ſex excels the female.
Latin 177
Engliſh 325

CHAP. LXIII. The pre-eminence of the Man over the Woman is likened to the pre-eminence of the ſoul over the body, and the ſuperior part of the reaſon over the inferior.
Latin 178
Engliſh 326

CHAP. LXIV. The Writer here combines the different kinds of pre-eminence taken notice of above.
Latin 179
Engliſh 327

CHAP. LXV. Pre-eminence is not repugnant to ſocial life.
Latin 180
Engliſh 329

CHAP. LXVI. The prefigurement of the Church under the form of a Woman proves the Woman's ſubjection to the Man.
Latin 181
Engliſh 329

CHAP. LXVII. The Grandſon's title is firſt effectually diſproved.
Latin 181
Engliſh 330

CHAP. LXVIII. Matter introductory to the Judgment.
Latin 181
Engliſh 330

CHAP. LXIX. The Judgment.
Latin 182
Engliſh 331

CHAP. LXX. The Author here remits his work for the examination of the Supreme Pontiff.
Latin 182
Engliſh 331

CHAP. LXXI. Cuſtom cannot confer upon a Woman the right of inheritance in a kingdom which knows no ſuperior.
Latin 183
Engliſh 332

REMARKS ON PRECEDING TREATISE 337*
TABLE OF QUOTATIONS TO DO. 347*
NOTES TO DO. 355*

DE LAUDIBUS LEGUM ANGLIÆ.

PAGE

THE INTRODUCTION 337
THE SAME IN ENGLISH 385

CHAP. I. The Chancellor exhorts the Prince to the ſtudy of the Laws.
Latin 337
Engliſh 385

CHAP. II. The Prince's anſwer.
Latin 338
Engliſh 387

CHAP. III. The Chancellor enforceth his exhortation.
Latin 339
Engliſh 388

CHAP. IV. He proves that a Prince by the Laws may be made happy.
Latin 339
Engliſh 388

CHAP. V. Ignorance of the Laws cauſeth a contempt thereof.
Latin 341
Engliſh 390

CHAP. VI. A repetition of his exhortation.
Latin 342
Engliſh 391

CHAP. VII. The Prince yields his aſſent, but propoſes his doubts.
Latin 342
Engliſh 392

CHAP. VIII. Such a knowledge of the Law as is neceſſary for a Prince is ſoon to be acquired.
Latin 343
Engliſh 393

CHAP. IX. A King whoſe government is political cannot change the Laws.
Latin 344
Engliſh 394

CHAP. X. The Prince propoſes a queſtion.
Latin 345
Engliſh 396

CHAP. XI. The Chancellor's anſwers refers the Prince to his former treatiſe.
Latin 345
Engliſh 396

CHAP. XII. How kingdoms ruled by regal government firſt began
Latin 345
Engliſh 396

PAGE

CHAP. XIII. How thoſe ruled by political government firſt began.
Latin 346
Engliſh 397

CHAP. XIV. The Prince abridges what the Chancellor had been diſcourſing of in the two foregoing chapters.
Latin 347
Engliſh 399

CHAP. XV. All laws are the Law of Nature, cuſtoms or ſtatutes.
Latin 348
Engliſh 400

CHAP. XVI. The Law of Nature in all countries is the ſame.
Latin 349
Engliſh 400

CHAP. XVII. The cuſtoms of England are of great antiquity, received and approved of by five ſeveral Nations ſucceſſively.
Latin 349
Engliſh 401

CHAP. XVIII. How ſtatutes are made in England.
Latin 349
Engliſh 401

CHAP. XIX. The difference between the Civil Laws and the Laws of England.
Latin 350
Engliſh 402

CHAP. XX. The firſt caſe wherein the Civil Laws and the Laws of England differ.
Latin 350
Engliſh 403

CHAP. XXI. The inconveniences of that Law which tries cauſes by witneſſes only.
Latin 351
Engliſh 403

CHAP. XXII. Concerning torture, and putting to the rack.
Latin 352
Engliſh 405

CHAP. XXIII. The Civil Law defective in doing juſtice.
Latin 353
Engliſh 407

CHAP. XXIV. The diviſion of Counties. Sheriffs and their appointment.
Latin 354
Engliſh 407

CHAP. XXV. Jurors, how choſen and ſworn.
Latin 355
Engliſh 408

PAGE

CHAP. XXVI. How Jurors are informed by evidence. The way of proceeding in Civil Cauſes.
Latin 356
Engliſh 410

CHAP. XXVII. The way of proceeding in Capital Caſes.
Latin 357
Engliſh 411

CHAP. XXVIII. The Prince owns his conviction that the Laws of England are much more commodious for the ſubject as to the proceedings in the above inſtances, than the Civil Law.
Latin 358
Engliſh 412

CHAP. XXIX. The reaſons why inqueſts are not made up of Jurors of twelve men in other countries.
Latin 359
Engliſh 413

CHAP. XXX. The Prince commends the Laws of England with reſpect to their proceeding by Juries.
Latin 360
Engliſh 415

CHAP. XXXI. Whether the proceeding by Jury be repugnant to the Law of God, or not.
Latin 361
Engliſh 415

CHAP. XXXII. The Chancellor's anſwer.
Latin 361
Engliſh 416

CHAP. XXXIII. The Prince aſks the reaſon why ſome of our Kings have taken diſguſt at the laws of England.
Latin 363
Engliſh 418

CHAP. XXXIV. The Chancellor's anſwer.
Latin 363
Engliſh 418

CHAP. XXXV. The inconveniences which happen in France by means of the abſolute regal government.
Latin 364
Engliſh 419

CHAP. XXXVI. The comparative advantages in England; where the government is of a mixed nature made up of the regal and political
Latin 365
Engliſh 421

PAGE

CHAP. XXXVII. Concerning the regal government and the political government.
Latin 366
Engliſh 422

CHAP. XXXVIII. The Prince deſires the Chancellor to proceed to other caſes wherein the Law of England and the Civil Law diſagree.
Latin 367
Engliſh 423

CHAP. XXXIX. Concerning the legitimation of children born before matrimony.
Latin 367
Engliſh 423

CHAP. XL. The reaſon why baſe-born children are not in England by the ſubſequent marriage legitimated.
Latin 369
Engliſh 425

CHAP. XLI. The Prince's approbation of the reaſons given in the foregoing chapter.
Latin 370
Engliſh 427

CHAP. XLII. Concerning the rule of the Civil Law, *Partus ſemper ſequitur ventrem.*
Latin 371
Engliſh 427

CHAP. XLIII. The Prince yields his aſſent to the Chancellor, and diſapproves of the ſaid rule.
Latin 372
Engliſh 429

CHAP. XLIV. Concerning the tuition of orphans.
Latin 373
Engliſh 430

CHAP. XLV. Concerning the education of the young nobility during their minority.
Latin 373
Engliſh 431

CHAP. XLVI. Concerning open theft and private theft.
Latin 374
Engliſh 431

CHAP. XLVII. The Prince paſſes on to an inquiry why the laws of England are not taught in our Univerſities.
Latin 374
Engliſh 433

CHAP. XLVIII. The Chancellor's anſwer.
Latin 375
Engliſh 432

		PAGE
CHAP. XLIX.	The diſpoſition of the general ſtudy of the laws of England, of the Inns of Chancery, and the Inns of Court.	
	Latin	376
	Engliſh	434
CHAP. L.	Of the ſtate, degree, and creation of a Serjeant-at-Law.	
	Latin	377
	Engliſh	435
CHAP. LI.	Of the Judges of the Courts in Weſtminſter Hall, the manner of their creation, habit, and employment.	
	Latin	379
	Engliſh	437
CHAP. LII.	The Prince ſtarts an objection with reſpect to the delays in law proceedings.	
	Latin	380
	Engliſh	439
CHAP. LIII.	The Chancellor's anſwer.	
	Latin	381
	Engliſh	439
CHAP. LIV.	The Concluſion.	
	Latin	382
	Engliſh	441

DE DOMINIO REGALI ET POLITICO.

CHAP. I.	The Difference betwene *Dominium Regale*, and *Dominium Politicum et Regale*	449
CHAP. II.	Why one King reynith *Regaliter tantum*, and another reynith, *Politice et Regaliter*	450
CHAP. III.	Hereafter be ſchewyd, the Frutes of *Jus Regale*, and the Frutes of *Jus Politicum et Regale*	451
CHAP. IV.	Hereafter ys ſchewyd hou the Revenuz of Fraunze be made grete .	453
CHAP. V.	The harmes that come of a Kyng's Povertie	454
CHAP. VI.	Ordynaunces for the Kyng's Ordenarye Chargys . . .	455
CHAP. VII.	The Kyngs Extraordynarye Chargys	457
CHAP. VIII.	Yf the Kyngs Lyvelood ſuffyce nott, his Subgettys aught to make yt ſuffycyent	458
CHAP. IX.	Hereafter be ſchewyd the Perilles that may come to the Kyng, by over myghty Subgetts	459

PAGE

CHAP. X. How that the Crown may be beſt endowed 461

CHAP. XI. Hereafter is ſchewyd, what of the Kyngs Lyvelood gevyn away, may beſt be takyn ageyne 463

CHAP. XII. Hereafter ys ſchewyd, what Harme would come to Englond, if the Commons thereof were Pore 464

CHAP. XIII. Onely lacke of Harte, and Cowardiſe, kepyn the Frenchemen from Ryſyng . 466

CHAP. XIV. Hereafter is ſchewyd, why it nedith that ther be a Reſumpcion, and a Graunt of Goods, made to the Kyng 467

CHAP. XV. How the Kyngs Conceil, may be beſt Choſyn and Eſtablyſchyd . . 468

CHAP. XVI. How the Romaynes proſperyd, whiles they had a grete Councele . 470

CHAP. XVII. Here followen Advertiſements, for the gevyng of the Kyngs Offices . 471

CHAP. XVIII. Advertſyements hou Corodies, and Pencions may beſt be gevyn . 472

CHAP. XIX. How grete Good wyll growe, of the forme endowyng of the Crowne . 473

CHAP. XX. Advertiſement for making of Patents of Gyfts . . . 474

EXAMPLE WHAT COOD COUNSAYLE HELPITHE 475

THE TWENTY-TWO RIGHTWISNESSES BELONGYNGE TO A KYNGE . . . 477

A DIALOGUE BETWEEN UNDERSTANDING AND FAITH 483

OF THE TITLE OF THE HOUSE OF YORK 497

DEFENSIO JURIS DOMUS LANCASTRIÆ 505

TRANSLATION OF THE FOREGOING 511

A DEFENCE OF THE HOUSE OF LANCASTER 517

THE DECLARACION UPON WRYTINGES SENT OUTE OF SCOTTELAND . . 523

LEGAL ADVICE TO PURCHASERS OF LAND 543

THE COMODYTES OF ENGLOND 549

A LIST OF THE KNOWN WORKS OF SIR JOHN FORTESCUE . . . 555

PART II. OF THIS VOLUME.

LEGAL OPINIONS AND JUDGMENTS OF SIR JOHN FORTESCUE . . . 1

SUPPLEMENT TO CONTENTS.

DE TITULO EDWARDI COMITIS MARCHIÆ.

The Same Translated into English.

		PAGE
Introduction	. . . . .	63*
The same in English	. . . . .	77*
Chap. I.	Here follows the deſcent of the ſaid Edward, by which he pretends a title to the crown of England.	
	Latin	63*
	Engliſh	78*
Chap. II.	Objection is raiſed to this pretended title.	
	Latin	64*
	Engliſh	78*
Chap. III.	This is declared by ſeveral examples.	
	Latin	64*
	Engliſh	78*
Chap. IV.	A ſecond example from the acts of the Engliſh after the Conqueſt.	
	Latin	65*
	Engliſh	79*
Chap. V.	The ſame is confirmed by the law of England in like caſe.	
	Latin	65*
	Engliſh	80*
Chap. VI.	It is confirmed alſo by the like right in the kingdom of France, and of Spain alſo, the kings whereof, like the kings of England, were from ancient times anointed.	
	Latin	66*
	Engliſh	80*
Chap. VII.	Inconveniences which would follow on the oppoſite ſuppoſition.	
	Latin	66*
	Engliſh	81*

		PAGE
CHAP. VIII.	Argument againſt the aforeſaid pretended title, ſhowing that Philippa was not the daughter of Lionel.	
	Latin	67*
	Engliſh	82*
CHAP. IX.	Argument proving that laple of ſuch right, if he could have had any, had been made by legitimate preſcription.	
	Latin	68*
	Engliſh	83*
CHAP. X.	Confirmation taken from Auguſtine, "De Civitate Dei," as it is quoted in the book which is called "Compendium Morale."	
	Latin	69*
	Engliſh	84*
CHAP. XI.	Argument ſhowing that it cannot be truly ſaid that Edward is choſen by the Lord to be King of England by a private diſpoſition of the Lord.	
	Latin	71*
	Engliſh	86*
CHAP. XII.	Incidental argument ſhowing the enormous offence of the inhabitants of England who aſſiſted the uſurper Edward.	
	Latin	72*
	Engliſh	87*
CHAP. XIII.	Argument founded upon that principle of law that by renunciation and contrary act lapſe of right is made.	
	Latin	72*
	Engliſh	87*
CHAP. XIV.	Argument proving that by abjuration he was excluded from his right, if he could have had any.	
	Latin	73*
	Engliſh	88*

PREFACE.

IN preſenting to the deſcendants of Lord Chancellor Forteſcue this firſt complete collection of his Works, it is right to explain that, although I have undertaken, as a neceſſary part of the taſk, to prepare for the preſs ſuch of them as now appear for the firſt time in type, I am well aware that it is only by one well verſed in the legal and hiſtorical antiquities of England and of the Continent in the fifteenth century, that the operation can be properly and efficiently performed. Such an one, however, not having come forward during the long period which has elapſed ſince Forteſcue's time, and the manuſcript copies of the unprinted works being rare, and, in ſome caſes, unique, I reſolved, if I could do no more, at leaſt to ſave thoſe that remain from the extinction to which they have been expoſed, by printing a few copies; ſome of them to be diſtributed among ſuch members of the Forteſcue Family as may be ready to accept them, others to be placed in the chief public and private libraries of the country, there to await the annotations of ſome more learned editor.

To enſure, as far as poſſible, correctneſs in the text, collations between different MSS. have, in every caſe that admitted of it, been made by experienced hands.

The tranſlation of the *De Naturâ Legis Naturæ*, the moſt important of the hitherto unprinted works, by my brother, Mr. Chicheſter Forteſcue, will be

found to repreſent faithfully, in excellent Engliſh, the meaning and ſpirit of the original; while his careful editing of the Latin has cleared up many obſcurities in the text, and in the quotations with which it abounds.

The materials for the Life of Sir John Forteſcue are, unfortunately, moſt ſcanty; the few pages devoted to it in this volume containing all the facts which I have been able to get together calculated to throw light upon his remarkable and eventful career.

The extracts from the Year-Books, giving his opinions and judgments when Chief Juſtice of England, have been put into Engliſh by Mr. Edward Maunde Thompſon; and this tranſlation, as well as the original Norman-French, has been reviſed by Mr. Alfred Horwood, of the Middle Temple, a gentleman who has, probably, more acquaintance with theſe old reports than any other living perſon; and to whom I wiſh to expreſs my acknowledgments and thanks for his generoſity and kindneſs in volunteering to undertake this very troubleſome taſk, and in carrying it through, even to the correcting of the ſheets as they paſſed through the preſs.

I am indebted to many perſons for aſſiſtance in obtaining materials, both for the Life and for the Collection of Works, among whom I would eſpecially mention Mr. Richard Sims, of the Britiſh Muſeum, the Rev. J. Orlebar Payne, the Rev. Joſeph Stevenſon, of the Record Office; Sir Thomas Phillipps, Bart., of Middlehill; the Rev. Profeſſor Stubbs, of Oxford; the Rev. H. O. Coxe, of the Bodleian; the Rev. Canon Collyer; and Miſs Gregor, of Trewarthennick.

Of Sir John's two portraits in this volume, the firſt is copied from Faithorne's print, engraved in 1663 for Waterhouſe's "Forteſcutus Illuſtratus;" the preface to that work ſtating that Faithorne worked from an old portrait belonging to the then poſſeſſor of Salden. That likeneſs, and all others in the ſame attitude, are probably copied from the original contemporary picture at Caſtlehill, of ſmall ſize, viz., 16 by 12 inches, painted on panel.

The ſecond portrait has the appearance of a younger man than the former;

the right hand holds a book, with the finger between its leaves; it is now engraved for the firſt time from a picture on canvaſs, not well executed, ſuppoſed to be of about the year 1600, belonging to Mr. Forteſcue Turville, of Boſworth Hall, Leiceſterſhire, who very obligingly lent it to me for this Work. Mr. Turville inherited it from the Forteſcues of Salden, where it hung in the time of Sir John Forteſcue, Queen Elizabeth's Chancellor of the Exchequer.

CLERMONT.

London,
February 6th, 1869.

ILLUSTRATIONS TO THIS VOLUME.

	PAGE
Portrait of Chancellor Fortescue, from Faithorne's Print	*to face title.*
Ebrington Manor-House	,, 15
Signature of the Chancellor	,, 21
Ebrington Church	,, 38
The Chancellor's Tomb	,, 44
Ornamented Initials from MS. of De Natura	,, 115
Facsimile of a Page of Cambridge MS. of De Laudibus	,, 330
Facsimile of De Dominio in handwriting of Sir Adrian Fortescue	,, 474
Facsimile of a Page of MS. of Understanding and Faith	,, 487
Facsimile of a Page of MS. of The Declaracion	,, 523
Portrait of the Chancellor from the Bosworth Picture (Part II.)	,, 1

WOODCUT PRINTED WITH THE TEXT.

The Chancellor's Seal	25

NOTICES OF

THE LIFE OF SIR JOHN FORTESCUE.

LIFE OF SIR JOHN FORTESCUE.

SIR JOHN FORTESCUE, Chancellor to King Henry the Sixth, was the ſecond ſon of Sir John Forteſcue of Winſtone, in South Devon, who was preſent at the battle of Agincourt in 1415, and who was afterwards appointed by Henry the Fifth governor of the fortreſs of Meaux in the Province of La Brie in France. He was younger ſon, by Elizabeth, daughter of Sir John Beauchamp of Ryme in Dorſet, of William Forteſcue of Winſtone, twelfth in deſcent from Sir Richard le Fort, ſurnamed Fort-eſcu, or Strong-ſhield, who came from the Côtentin in Lower Normandy—that cradle of Anglo-Norman families—with William the Conqueror, and fought in the battle of Haſtings. Several pedigrees have made the Chancellor to be grandſon of Sir John the Governor of Meaux, and ſon of Sir Henry Forteſcue Chief Juſtice in Ireland; but they are certainly in error, becauſe a careful compariſon of the periods during which the three perſons in queſtion held their public appointments will ſhow that it is ſcarcely poſſible that Sir Henry and the Chancellor[1] could have ſtood to each other in the relation of father and ſon, and becauſe ſtill ſtronger, and what for the preſent purpoſe may be called concluſive evidence is found in a contemporary document,[2] where it is incidentally mentioned that "Herry Forteſcue, late Juſtice in Ireland," was the ſon of John Forteſcue, and that he had a brother Richard; and this laſt being alſo brother of the Chancellor, it follows that he and Sir Henry were likewiſe brothers.[3]

---

[1] Prince, Worthies of Devon.

[2] Proceedings in Chancery, reign of Elizabeth, and from Richard II. to Richard III. 3 vols. folio. 1830. Vol. ii. p. xviii. See the whole deed in the Hiſtory of the Forteſcue Family.

[3] There is beſides a deed of 14 Henry VI., quoted in the Biog. Britt., vol. iii. 1986, which is a grant by Henry Forteſcue to John his brother, and to Iſabella, the wife of ſaid John, of all the meſſuages, lands, and tenements of John Forteſcue, *father of ſaid Henry*, in Overcombe, Efford, and Alſton, in the parish of Holbonghton, in Devonſhire.

Of the place of his birth there is no poſitive mention. Prince[1] ſays that it was "moſt likely Norris, near South Brent in Devonſhire." This was a ſeat belonging to his mother, who was daughter and heireſs of William Norris of Norris, where her anceſtors had been ſettled for eight generations.[2]

Neither do we know the preciſe time of his birth, although by a paſſage in his work, "De Laudibus Legum Angliæ," it is poſſible to get within three or four years of it.

He there ſays, in deſcribing the degree of Sergeant-at-Law,[3] "Quare ad Statum et Gradum talem, id eſt ſervientis ad legem, nullus hucuſque aſſumptus eſt qui non in prædicto generali legis ſtudio ſexdecim annos ad minus antea complevit," and in the chapter before he ſays that the ſtudents are, for the moſt part, youths. Now, Forteſcue was made a Sergeant in Michaelmas Term, 1430, and conſequently muſt have become a ſtudent of the law, at ſooneſt, in the year 1414, ſo that if he was then eighteen years old, he was born in 1396, if twenty, as is perhaps more likely, then 1394 was the year of his birth.

Biſhop Tanner ſays that he was educated at Exeter College, Oxford, and he was called to the Bar at Lincoln's Inn.[4] Of the manner of his life and ſtudies we have no account, unleſs his deſcription of law-ſtudent life in his Treatiſe be taken from his own experience. In that caſe Forteſcue was one of an hundred or more young men, all "gentlemen by birth and fortune, ſpending, at leaſt, eight and twenty pounds a year each,"[5] (an allowance equal, by Hallam's computation, to more than £400), with a ſervant to wait upon him, and joining in the ſtudies and amuſements thus detailed. "Both in the Inns of Court and Inns of Chancery is an academy where the ſtudents learn ſinging and all kinds of muſic, dancing and other ſuch accompliſhments (which are called Revels), as are ſuited to their quality, and ſuch as are uſually practiſed at Court; out of term the greater part apply themſelves to the ſtudy of the law. Upon feſtival days, after the ſervices of the church are over, they employ themſelves with ſtudy of hiſtory, ſacred and profane. There everything which is good and virtuous is to be learned; all vice is diſcouraged and baniſhed, ſo that knights, barons, and the greateſt nobility of the kingdom often place their children in the Inns of Court, not ſo much to make the laws their ſtudy, as to form their manners, and to keep them from vice. Bickerings and diſturbances are almoſt unknown. The only puniſhment is expulſion from the Society, more dreaded than impriſonment and irons by criminals, becauſe he who is turned out of one Society is never received into another; thus there is conſtant harmony, and the greateſt friendſhip and freedom of converſation."

---

[1] Prince, Worthies of Devon. [2] Pole, Collections for Devon, p. 300.

[3] De Laudibus, Ed. Amos, p. 261, chap. 50.

[4] Campbell, i. 371. Tanner, Bib. Britt., London, 1748, p. 293. Biog. Britt. iii. 2087.

[5] Hallam, Middle Ages, chap. ix., where he eſtimates the value of money now at fifteen times that in the time of Henry VI.

This picture, although it may be ſomewhat overcoloured, deſcribes a manner of life and a ſociety well calculated to produce the profound lawyer, and the Chriſtian ſtateſman, which this young law-ſtudent became, and whoſe character this education of the Inns of Court muſt have helped to form.

In the year of Henry the Sixth, 1425, he was made a Governor of Lincoln's Inn; next year again, and a third time in 1429, 7 Henry the Sixth. In the two firſt entries[1] in Dugdale's "Origines Judiciales," he appears as "Forteſcue Junior," which looks as if his elder brother, Sir Henry, was alſo a member of that Inn.

Of his career, until he became a ſergeant, nothing is told; how ſoon or how late he got into practice, by what means, or to what extent. It is likely that he took that degree ſoon after his ſtanding at the bar had qualified him for it, if we may judge by the number of years he lived afterwards, and the date of his promotion, which was in Michaelmas Term, 1430.[2] Of the particulars of an inveſtiture with the White Silk Coif, the badge of his new rank, we have his own account: "The Lord Chief Juſtice of the Common Pleas, by and with the advice and conſent of all the Judges, is wont to pitch upon, as often as he ſees fitting, ſeven or eight of the diſcreeter perſons, ſuch as have made the greateſt proficiency in the general ſtudy of the laws, and whom they judge beſt qualified. At the time and place appointed, thoſe who are ſo choſen hold a ſumptuous feaſt, like that at a coronation, which is to continue for ſeven days together; neither ſhall any one of the new-created ſergeants be at a leſs expenſe ſuitable to the ſolemnity of his creation, than two hundred and ſixty pounds and upwards, whereby the expenſes in the whole which the eight will be at will exceed three thouſand two hundred marks, to make up which one article is, every one ſhall make preſents of gold rings, to the value, in the whole, of forty pounds (at the leaſt) Engliſh money."

"I very well remember," he ſays, "that when I took upon me the ſtate and degree of a ſergeant-at-law, my bill for gold rings came to fifty pounds."

He then proceeds to tell us how this large ſum, no leſs than eight hundred pounds of our preſent money, if we are to follow Hallam, was diſpoſed of.

"Each ſergeant at the time of his creation gives to every prince of the blood, to every duke, and to each archbiſhop who ſhall be preſent at the ſolemnity, to the Lord High Chancellor, and to the Treaſurer of England, to each a ring of the value of twenty-ſix ſhillings and eightpence; to every earl and biſhop, to the Keeper of the Privy Seal, to each Chief Juſtice, to the Chief Baron of the King's Exchequer, a ring worth twenty ſhillings; and to every other lord of Parliament, to every abbot, and to every prelate of diſtinction, every worſhipful knight there and then preſent, to the Maſter of the Rolls,

[1] Dugdale, Origines, p. 249; De Laudibus, chap. 50.

[2] Dugdale, Chron. Series, p. 61; Biographia Britannica (but Foſs, Lives of the Judges, vol. iv., gives Michaelmas, 1429, for the ſergeant's creation). The Year-Book may clear up this point.

and to every juſtice, a ring to the value of one mark; to each Baron of the Exchequer, to the Chamberlain, and to all the great men at Court then in waiting on the King, rings of a leſs value in proportion to their rank and quality, ſo that there will not be the meaneſt clerk, eſpecially in the Court of Common Pleas, but that he will receive a ring convenient for his degree. Beſides, they uſually make preſents of rings received of their friends and acquaintance."

"They give alſo liveries of cloth of the ſame price and colour, which are diſtributed in great quantities, not only to their menial ſervants, but to ſeveral others, their friends and acquaintance, who attended at the ceremony of their creation."

It is probable that Forteſcue's marriage took place during this period of his life He certainly was a married man in the end of 1435 or early in 1436, as appears by the Deed of 14 Henry VI. already referred to, when "Iſabella, wife of ſaid John," is mentioned; and it is likely that he had then been ſo for ſome two or three years, for his only ſon, Martin, who died in 1472, left at his death a ſon and heir aged twelve years.

Sir John's wife was Iſabella Jamyſs, daughter and heireſs of John Jamyſs, Eſquire, of Philip's Norton, in Somerſet, on the borders of Wiltſhire, near Bath. In the "Patent Rolls"[1] of 21 Henry VI. is "an inſpeximus and confirmation of a grant by the Prior of the Carthuſian order of Hinton (Hinton-Charterhouſe) to John Forteſcue and Iſabella his wife, and Margery, mother of Iſabella, of meſſuages in Philips Norton," the grant being dated the Tueſday after the feaſt of St. Hilary, 19 Henry VI. (i.e. January 14th to 21ſt, 1441, St. Hilary's Day being on the 13th January), and the inſpeximus bearing date Weſtminſter, the 12th of February, 21 Hen. VI. (1443).

The document recites that the ſaid Iſabella was the daughter of Margery, who was wife of John Jamyſs, of Philip's Norton. The eſtate thus acquired remained in the Chancellor's family until it was ſold, in the year 1725, to Mr. Frip, by Hugh Forteſcue, Earl Clinton.[2] The Forteſcue arms may ſtill be ſeen in ſtone on a houſe in the village of Norton St. Philip's.[3] By the ſame lady he acquired lands in Wilts.[4] Thus "John Forteſcue, Knight, and Iſabella his wife granted by Deed, dated Novr. 21, 35 Hen. VI. (1456), to Robert Brigge, the reverſion of a tenement at Bradford, Wilts."

The ſtatement made by ſeveral authors that the Chancellor's wife was Elizabeth, daughter of Sir Myles Stapleton, is in error, that lady being the ſecond wife of Sir John Forteſcue of Punſbourne, ſo given in an Inquiſition Poſt-mortem taken at Royſton, in Hertfordſhire, in July, 1501, upon the death of the ſaid Sir John, who was nephew

---

[1] Patent Rolls, 21 Hen. VI., Pt. ii. No. 34. The entire document is given in the Appendix to this work.

[2] Letter to the Author from Earl Forteſcue, Nov. 6, 1866.

[3] Information from Mr. Jackſon, Librarian at Longleat, Auguſt, 1866.

[4] Notitiæ and Pedigrees concerning the Family of the Forteſcues, Brit. Mus. Add. MS. 15,629, f. 62[b].

to the Chancellor, and died July 28, A. D. 1500. Elizabeth Stapleton was the widow of Sir William Calthorpe, Knight.[1]

The iſſue of the marriage was an only ſon, Martin, ſtyled in ſome documents Sir Martin, and at leaſt two daughters. Martin married, in 1454,[2] Elizabeth, daughter and heireſs of Richard Denzile, Eſquire, of Wear-Giffard, who inherited that property as well as the eſtates of Filleigh (now Caſtle Hill) and Buckland-Filleigh, near Torrington. He died before his father. Sir John's daughter, Elizabeth, was married, about 1456,[3] to Edmond, ſon of Thomas Whaleſburgh, Eſquire, of the county of Cornwall.

The other daughter, Maud, married Robert Corbet, ſon of Sir Robert Corbet, a very unfortunate alliance, as appears from what Blomefield, in his "Hiſtory of Norfolk," thus relates:[4]—

"Maud, daughter of Sir John Forteſcue, Lord Chief Juſtice, who had the Lordſhip of Dunham Parva in the 33rd of Henry the Sixth (A.D. 1455), married Robert, ſon of Sir Robert Corbet. He forſook her, and re-married Lettice, daughter of John Shirewood of Coventry, and left iſſue by this Lettice, Robert and Alice. His firſt wife, Maude, from whom he was never divorced, ſurviving him,—upon his death Robert Corbet, Eſquire, his brother, ſecond ſon of Sir Robert aforeſaid, made an entry into his lands as next and legal heir; but Lettice aforeſaid having re-married Talboys, a ſervant to Thomas Rotherham, Archbiſhop of York and Chancellor of England, Roger ſued him in the Spiritual Court of Canterbury, and Talboys procuring a prohibition, Roger appealed to Rome, and a ſuit was directed by Archbiſhop Rotherham to Roger of 'ne exeat regnum.' Upon this Roger was laid up in the Court two years, but being enlarged in the laſt year of King Edward the Fourth (1483), died preſently after."

"It appears that Maud, the firſt wife of Robert, had a jointure of twenty marks per annum out of this manor. She retired, and lived in the Nunnery of Helveſton, in Bedfordſhire, and died there."

After Forteſcue's promotion to be ſergeant, the Year-Books are no longer ſilent concerning him, but make frequent mention of his arguments.

His practice was large, and his knowledge of Engliſh law conſpicuous. He acted upon ſome emergencies as Judge of Aſſize, in which capacity he went the Norfolk Circuit in 1440 and 1441 (18 & 19 Hen. VI.).

In the latter year, in Eaſter Term, he was appointed a King's Sergeant;[5] and when the

---

[1] Inq. Poſt-mortem, 16 Hen. VII., No. 3, Brit. Mus., and Notitiæ and Pedigrees of Forteſcue Family, Brit. Mus. Add. MS., from Peter le Neve, (Norroy,) and Blomefield's Norfolk, ix. 222, ed. 8vo.

[2] The marriage ſettlement, ſeen by the author of Stemmata Forteſcuana, is dated September 10, 33 Hen. VI. (1454).

[3] Exchequer of Pleas, 34 Hen. VI.

[4] Blomefield's Norfolk, vol. ix. p. 479 (8vo. edition).

[5] Dugdale, Chron. Series, p. 63. "Johannes Forteſcu ſerviens Regis ad Legem Paſch. 19 Hen. VI."

death of Sir John Hody made a vacancy in the Chief Juſticeſhip, he, without having paſſed through the intermediate ſtep of a Junior Judge, was, on the 25th of January, 1442, (20 Hen. VI.), raiſed to that high place.[1] Here his reputation as a great judge was ſoon and permanently eſtabliſhed, and here he continued for more than eighteen years to pronounce thoſe judgments and expoſitions of the laws which are ſtill quoted with reſpect.

The late Lord Campbell, a great admirer of Forteſcue, ſays of him that "he diſcharged his duties as Chief Judge with extraordinary ability, and ſeems to have been one of the moſt learned and upright men who ever ſat in the Court of Queen's Bench;"[2] and in another place he calls him "one of the moſt illuſtrious of the Chief Juſtices, for ever to be had in remembrance for his judicial integrity;"[3] and Fuller, in his "Worthies of England," joining him with Chief Juſtice Markham, his immediate ſucceſſor, ſays:[4] "Theſe I may call two Chief Juſtices of the Chief Juſtices, for their ſignal integrity; for though the one of them favoured the Houſe of Lancaſter, and the other the Houſe of York, in the titles to the Crown, both of them favoured the Houſe of Juſtice in matters betwixt party and party."

The Chief Juſtice was knighted upon his appointment or ſoon after. I find him ſtyled "Miles" firſt in June, 1443.[5]

We have to regret the almoſt complete abſence of notices of his life during the eighteen or nineteen years of his Chief Juſticeſhip. None of his correſpondence has come down to us, and his name occurs but ſeldom in the ſcanty memorials of contemporary events not purely military, which have ſurvived the troublous times that enſued.

The firſt reference to him that I can find is in the Paſton Letters the year after his promotion, in a letter written at his deſire to a brother Judge, Sir William Paſton:[6]—

"To my right worthy and worſhipful Lord, William Paſton, Juſtice, in haſte.

"Pleaſe it your good Lordſhip to weet, that the Chief Juſtice of the King's Bench recommendeth him to you, and is right ſorry of the matter that is cauſe of your none coming hither, but he will do all that he can or may for you.

"He hath had a ſciatica that hath letted him a great while to ride, and dare not yet come on none horſe's back, and therefore he hath ſpoken to the Lords of the Council, and informed them of your ſickneſs, and his alſo, that he may not ride at theſe next aſſizes to Eaſt Grinſtead; and though thoſe aſſizes diſcontinue pur noun veno dez Juſticez, he hopeth to be excuſed, and ye alſo.

---

[1] Dugdale, Chron. Series, p. 62.

[2] Campbell, Lives of Chancellors, vol. i. p. 376.

[3] Campbell, Chief Juſtices, vol. i. p. 141.

[4] Fuller, Worthies, vol. ii. p. 571, article Markham (8vo. Edition).

[5] Will of John Cheddar, of Cheddar, in Dodſworth MS.

[6] Paſton Letters: Letter VI. vol. iii. p. 27; Sir William Paſton, born in 1378, made a Judge of the Common Pleas in 1430, died in 1444 (ſee Preface to Fenn's edition).

"And as for the remanent of the aſſizes, he ſhall purvey to be there by water; and Almighty Jeſu make you heyle and ſtrong.

"Written right ſimply, the Wedneſday next tofore the Feaſt of the Purification of our Lady, at London,

"By your moſt ſimple ſervant,

"JAMES GRESHAM.[1]

"London, Wedneſday,
"30th of January, 1443. 22 Hen. VI."

The abſence at that period of any carriage-road between London and the Aſſize town of one of the home counties is worthy of remark. All who were unable to walk, or to ride on horſeback, could only reach the Suſſex coaſt by a ſea voyage!

In this year we find him ſitting as a Privy Councillor in "The Starred Chamber" on ſeveral occaſions.[2] And ſerious tumults having occurred at Norwich on account of certain eccleſiaſtical exactions, a ſpecial commiſſion was iſſued to him and others in the month of March for the trial of the rioters. The event is thus noticed in the Minutes of the Privy Council:[3]—

"The Commons aroſe, and would have aſſaulted and fired the Priory, and have deſtroyed the Prior of the place, &c. Whereupon the King ſent thither the Chief Juſtice John Forteſcue, the Earl of Stafford, and the Earl of Huntingdon; and ſitten then in Seſſions, at the which were many of the City there indited, and the Prior alſo, and alſo the City loſt their liberties, and franchiſes, and freedoms that they had afore, and all the City ſeized into the King's hand . . . . And the Chief Judge Forteſcue and Weſtbury Judge, declarenden all their demenyng at Norwich."

In the Parliament held at Weſtminſter in 1444[3] (23 Hen. VI.) on the 25th of February, Forteſcue was named as one of the "Triers of Petitions," thus:—

"Ipſo domino Rege ſede Regia in Camera depictâ apud Weſtr., reſidente.

"Sont aſſignez Triours des Petitions d'Engleterre, Irland, Gales et Ecoce. The Cardinal Archbiſhop D'Everwyck, Duke of Glouceſter, Duke of Norfolk, Biſhops of London, Rocheſter, Norwich, and Ely, the Marquis of Dorſet, Earls of Arundel and Oxford, the Prior of St. John of Jeruſalem in England, the Abbots of St. Albon, of St. Auſtin of Canterbury, and of Glouceſter, Le Sire Grey de Ruthyn, Le Sire de Dudley, Le Sire de Faulconberge, Le Sire John Forteſcu, and William Weſtbury, et tiendront leur place en la Chambre du Chambellain, pres la Chambre du Peinte."

He was re-appointed in each Parliament until that of July, 1455, inclusive.

---

[1] He appears to have been Sir John Forteſcue's Secretary.

[2] Proceedings and Ordinances of the Privy Council, Nicholas, vol. v. cxxiv.-cxxv. &c.

[3] Rolls of Parliament, vol. v. p. 60, &c. &c.

His conduct in the caſe of Thomas Kerver attracted notice[1] at the time, and deſerves to be mentioned to his credit. Kerver had been impriſoned for ſome offence in Wallingford Caſtle, when the King pardoned him, and wiſhed him to be releaſed; but Forteſcue, to whom the King ſent his commands to iſſue his writ for the purpoſe, conſidered that he had no right or legal power to do ſo, and refuſed to comply. Bentley conjectures that this refuſal aroſe from his diſapproval of the favour ſhown to Kerver, or from doubts as to its legality, and admires his bold and upright behaviour. Henry had recourſe to his Chancellor, to whom he addreſſed this letter.

LETTER *from* HENRY THE SIXTH *to the* CHANCELLOR, *commanding him to iſſue his writ to the Conſtable of Wallingford Caſtle, to deliver Thomas Kerver from impriſonment.*

By the KING.

RIGHT Reũend fader in god, Right truſty and Right welbeloved We grete you wel. And how be hit that we now late ſent unto oure truſty and welbeloved Knight John ffforteſcu oure chief Juſtice charging hym to deliver oute of oure Caſtel of Walyngford in our behalve Thomas Keruer, which by oure cõmaundement hath long tyme been in ward in ye priſon of oure ſaid Caſtel, yet natheleſs ye ſaid John ffforteſcu hath do us to underſtande, that he hath no pouair ſo to do in any wiſe, Wherfore we wolling for certain cauſes and conſideracõns eſpecially moeving us, the forſaid Thomas to be in brief tyme delivered out of ye ſaid priſon without any firther delay, charge you yat ye do make oure writte in due fourme directed unto the Couneſtable of our ſaid Caſtel or his depute cõmaunding hym ſtraitly to deliver ye forſaid Thomas out of ye forſaid priſon, and to ſouffre hym to goo at large. And yat ye faille not herof as we truſte you. Lating you wite yat it is oure ful wille yat ye ſhal ſo do. And we wol theeſe our Ires to be unto you ſouffiſant warrant & diſcharge in yat behalve. Yeven under our ſignet at Pottern the XXV day of Aouſt the yere of our Regne XXV.

To the Right Reverend fader in god our Right truſty and Right welbeloved tharchbisſhop of Cant' our Chauncellier of Englande.[2]

There is a letter in the Paſton correſpondence,[3] written between 1450 and 1454 by one T. Bocking to William Wayte, containing the following curious ſentence:—

"The Chief Juſtice hath waited[4] to have been aſſaulted all this ſev'night nightly in his houſe, but nothing come as yet, the more pity, &c. &c. An oyer and determiner goeth into Kent, and commiſſioners my Lord the Duke of York, Bourchier, my maſter, that will

[1] Bentley, Excerpta Hiſtorica, folio 390.
[2] Miſcellaneous Records in the Tower.
[3] Paſton Letters, vol. iii. p. 135.
[4] "Waited" here means "expected."

not come then de proditionibus, &c. &c., but Kent prayeth them to hang no man when they come."

It would ſeem that the writer was, like his maſter, a follower of the York party, which may account for his ſavage language about Forteſcue the Lancaſtrian. The editor of the Paſton Letters ſurmiſes that the Commiſſion may have been to try ſome of the perſons implicated in Cade's rebellion.

In the year 1457, Sir John purchaſed from Sir Robert Corbet the reverſion, after the deceaſe of "Joyes, or 'Jocoſa,' late the wife of John Grevyle, Eſquier," of the manor and appurtenances of Ebrington, or Ebberton, near Campden, in Glouceſterſhire, for the ſum of one hundred and fifty-one pounds."[1] This eſtate, forfeited by his attainder, was granted to Sir John Brug, who died ſeized of it in the 11th year of Edward IV,[2] 1471 or 1472, a ſhort time before its reſtoration to the Chancellor, in whoſe family it has ever ſince continued, and is now the property of Earl Forteſcue.

A copy of the releaſe of the Manor of Ebrington will be intereſting, and is therefore given in full:—

Releaſe of Manor of Ebrington.[3]

To alle men to whom this wrytyng ſhal come, Rob[t] Corbet Knyght ſende gretyng in oure Lord For aſmuch as I have ſolde to Sir John Forteſcu Knyght in fee ſymple the reverſion of the Manour of Ebryghton in the Counte of Glouceſtre with the apptenaunces, to be had after the deceſſe of Joyes late the Wif of John Grevyle Eſquier for cli. pounds to be payed to me in certayn fourme betwene us, accorded by reaſon of which ſale I have by my dede enrolled and ſubſcribed with myne owne hande granted the ſame reuerſion to the ſaid Sir John and other named with hym, to his vſe in fee by vertu of which the ſaid Joyes hath attourned to the ſaid Sir John; and alſo I have delyuered to the ſame Sir John alle the euidences which ever come to myne handes concernyng the ſaid Manour; I woll and deſire as well the foreſaid Joyes, the Abbot of Wyncecombe, and alle other perſonnes in whos handes the ſaid Sir John or his heyres can wete or aſpye any of the forſaid evydences to be kepte, to delyuer the ſame evydences to ham, for the right and title of the reuerſion of the ſaid Manour is nowe clerely, trewly, and lawefully in the ſaid Sir John, his co-feoffees and theyre heyres, and from me and myne heyres for euer moore, and the ſaid Manour nor the reuerſion thereof, was neuer tayled to me nor none of myne aunceſtres, but alway in us hathe be poſſeſſed in fee ſymple, as far as euer I coude knowe by any evydence or by any manner, ſayyng by my trouthe. Wherfor I charge Rob[t] my ſone, and myne heyre, his iſſue, and alle thos that ſhal be myne heyeres herafter, vpon my bleſſyng, that they neuer vexe, implede, ne greve the forſaid Sir John, his ſaid cofeoffees, theyre heyres, nor aſſignees, for the forſaid Manour; and if they do, knowyng this my prohibicion I note wel they ſhal haue the curſe of God, for theyre wronge and owr trouthe, and alſo they ſhal haue my curſe, Witnyſyng this my wrytyng vnder my ſeale, and ſubſcribed with myne owne hande, Wreten the v day of December, the yere of the reigne of Kyng Henry VI[to] after the conqueſte XXXV[ti].

(L.S.) Sir Robert Corbet Knyth.

---

[1] See the Releaſe. [2] Rudder's Glouceſterſhire, p. 434. [3] Campbell, Lives of Chancellors, vol. i. p. 376.

An Inquiſition[1] into Forteſcue's property, taken after the Act of Attainder, ſhows that he had acquired, beſides Ebrington, eſtates in Wiltſhire at Kingſton-Deverell, Ironbridge, and Chippenham, at ſome period of his legal career. To theſe muſt be added a portion of his father's eſtate in South Devon, which he inherited at his death, between 1435 and 1437, deſcribed in the Inquiſition as Combe in Holbeton, Overcombe, Nethercombe, Efford, and Alſtone.

The ſalary attached to his Chief Juſtice's place was granted to him by Patent,[2] bearing the ſame date with his appointment, that is to ſay, January 25th, 20 Hen. VI. (1442). It was 180 marks, equal to £150 per annum, together with 106 ſhillings, and 11 pence farthing, and one-eighth of a halfpenny, for a robe with fur trimming at Chriſtmas, and ſixty-ſix ſhillings and ſixpence for a robe and its lining at Whitſuntide.

Not many days later, namely, on the 6th of February, the King grants him by patent a Tun (dolium) of Wine annually for his life, to be given to him by the Chief Butler of England from the port of Briſtol.[3]

And a ſecond yearly Tun was added by a New Patent of the 23rd of May, 1443, alſo for his life, in conſideration "of the good ſervice which the ſaid John Forteſcue performs and may hereafter perform for US."

Theſe two Tuns[4] are ſpecially exempted in the Act of Reſumption of Grants, paſſed in the 34th Henry VI. (1455), by the following clauſe: "Provided alſo that this Act of Reſumption be not prejudicial, nor extend to the Grant which we have made by our Letters Patentes to John Forteſcu Knight, of two Tun of Wine to be taken yearly in the Port of London for the term of his life."

An addition to his ſalary of forty marks per annum[5] was made in the year 1447 by a patent of the 22nd of March, which recites that this grant ſhall be for his life, and that its object is to enable him to keep up his ſtate more becomingly, and to meet his expenditure while in his office of Chief Juſtice, and alſo that expenditure which it will be fitting that he ſhould make when he ſhall have ceaſed to hold the ſaid office—a thoughtful precaution.

I ſhall here give in full the text of thoſe three out of the four above-named Patents, which have come down to us:—

Patent Rolls 20 Henrici VI. Annuity for John Forteſcue.

Pro Johe Forteſcue,

Rex omnibus ad quos, etc. Salutem. Sciatis quod gracià noſtra ſpeciali et ut dilectus et fidelis noſter Johannes Fforteſcu Capitalis Juſticiarius noſter Statum ſuum decentius manutenere et expenſas

[1] See Inquiſition at Amelbury, 7 Ed. IV, among Inq. Poſt-mortem, Brit. Mus., and Appendix.
[2] Patent Rolls, 20 Hen. VI. Membrane 10.
[3] Rymer, v. part i. p. 120. A Tun of wine contains 63 gallons or 84 dozen of quart bottles.
[4] Rolls of Parliament, vol. v. p. 317. [5] Patent Roll, 25th Hen. VI.

quas ipſum in officio prædicto facere oportebit ſuſtinere valeat, conceſſimus ei centum et quatuor viginti marcas percipiendas ſingulis annis per manus clerici ſive cuſtodis hanaperii noſtri aut per manus cuſtumariorum in portubus Londonis, Briſtoll, et villæ de Kingeſton ſuper Hull pro tempore exiſtentium ad terminos Paſchæ et Sancti Michaelis per equales portiones juxta formam cujuſdam acti in ultimo parliamento noſtro inde editi, necnon centum et ſex ſolidos undecim denarios unum quadrantem et ſextam partem unius oboli percipiendos ſingulis annis ad feſtum Natalis Domini pro una roba et furrura pro eadem erga idem feſtum, et ſexaginta et ſex ſolidos et ſex denarios percipiendos ſingulis annis ad feſtum Pentecoſtes pro una roba et livura pro eadem erga idem feſtum per manus prædicti Clerici ſive Cuſtodis aut prædictorum Cuſtumariorum juxta formam acti ſupradicti. In cujus, etc. Teſte Rege apud Weſtminſter xxv° die Januarii.

Per breve de privato Sigillo et de data prædicta auctoritate parliamenti.

Patent Rolls. 21 *Henry VI.*, (*A.D.* 1443). *Pro Johanne Forteſcu.*

Rex omnibus ad quos, etc. etc. Salutem.

Sciatis quod,

Cùm nuper per literas noſtras patentes quarum Data eſt apud Weſtmonaſterium Sexto Die Februarii Anno Regni Noſtri Viceſimo confeſſerimus dilecto et fideli Noſtro Johanni Forteſcu Militi, per nomen, Johannis Forteſcu, unum Dolium vini Percipiendum annuatim pro termino vitæ ſuæ in Portu Villæ noſtræ Briſtolliæ, per manus principalis Pincernæ noſtræ, et Hæredum noſtrorum, vel ejus deputati ibidem, qui pro tempore fuerit, prout in eiſdem Literis patentibus plenius continetur.

Nos tamen de uberiori gratiâ noſtra et ex mero motu noſtro, ac pro bono ſervitio quod idem Johannis Forteſcu Nobis impendit, et impendet in futurum, conceſſimus idem Johanni unum alium Dolium vini, Percipiendum annuatim, a Feſto Sancti Michaelis Archangeli ultimo præterito, pro Termino vitæ ſuæ in portu prædicto per manus capitalis Pincernæ noſtræ, et Hæredum noſtrorum, vel ejus Deputati ibidem qui pro tempore fuerit, ſimul cum prædicto Dolio vini annuo quod ei, ut præmittitur, conceſſimus; eo, quòd expreſſa mentio de aliis donis, et conceſſionibus, per Nos eidem Johanni ante hæc tempora factis, hic facta non exiſtit non obſtante.

In cujus, etc. etc.

Teſte Rege apud Weſtmonaſterium viceſimo tertio die Maii.

Per ipſum Regem, et de data prædicta, auctoritate Parliamenti.[1]

Patent Rolls. 25 *Hen. VI.* (*March* 22, 1447).

Rex omnibus ad quos etc. Salutem, Sciatis quod de gratia noſtra ſpeciali et ex certa ſciencia et mero motu noſtris et ut dilectus et fidelis noſter Johannes Forteſcue miles capitatis Juſticiarius noſter ad placita coram nobis, teneat ſtatum ſuum decencius manutenere et expenſas quas ipſum in offic o ſuo predicto et poſtquam ab eodem officio ceſſavit conſideracione ejuſdem officii facere oportebit ſuſtinere valeat, conceſſimus eidem Johanni pro regardo ſuo racione ſervicii ſui quod nobis in officio predicto impendet et indies impendere non deſiſtet, quadraginta libras ultra omne id quod ei quod per aliquas

[1] Rymer, Fœdera, vol. v. part i. p. 120. (Ed. Hagæ Comitis).

literas noſtras patentes ante hec tempora conceſſimus, percipiendas eaſdem quadraginta libras a feſto Sci Michaelis archi ultimo preterito, fingulis annis ad feſta paſche et Sci Michis per equales porciones de exitibus et proficiis hanaperii noſtri per manus clerici ſive cuſtodis ejuſdem hanaperii pro tempore exiſtentis aut de cuſtumis noſtris in portubus London, Briſtoll et ville de Kyngeſton ſuper Hull aut in aliquo eorumdem per manus cuſtumariorum in eiſdem portubus aut in aliquis eorumdem pro tempore exiſtentium juxta formam cujuſdam acti in parliamento noſtro, anno regni noſtri decimo octavo editi pro termino vite predicti Johis eo quod expreſſa mencio de aliis donis et conceſſionibus per nos eidem Johanni ante hec tempora factis hic facta non exiſtit et quocunque ſtatuto aut acta in contrarium facto non obſtante. In cujus rei teſt., etc. Teſte Rege apud Weſtm. xxij. die Marcii.

Per breve de privato ſigillo.

Forteſcue continued to act as Chief Juſtice until the dethronement of Henry, and the ſucceſs of Edward made it impoſſible for him to do ſo longer. He remained long enough[1] to have Yorkiſt partiſans indicted before him, and was not actually ſuperſeded until Sir John Markham was created by Edward IV. his Chief Juſtice on the 13th of May, 1461,[2] more than two months after the Battle of Towton, and after Edward's acceſſion to the throne.

He cannot, however, have ſat at Weſtminſter later than the firſt half of 1460, for the laſt record of his appearance in the Year-Books is as having preſided in the Court of King's Bench in Eaſter Term, 1460 (38th of Henry VI.),[3] although there were two or three caſes reported in the King's Bench or Exchequer Chamber in the three following Terms.[4]

His legal career was now over for ever—not through the weight of his years, although theſe were little ſhort of ſeventy, nor, as he ſoon proved, from any loſs of vigour of mind or body, but becauſe he had determined to follow the ſhattered fortunes of his Royal maſter, and had taken his part as a Lancaſtrian adherent.

Henry, ſet free from captivity by the defeat of the Yorkiſts at St. Alban's on the 17th of February, 1461, had rejoined his Queen and her forces, and retired with the army towards the Northern Counties where the ſtrength of his party lay. Here Forteſcue accompanied them, and not long after he had exchanged the dignified calm of a Judge's life for the tumult of the camp, he was found bravely fighting for the falling cauſe on the 29th of March in the bloody Battle of Palm-Sunday[5] between the villages of Towton and Saxton in Yorkſhire. Here, ſays Holingſhed, "in a fair plain field,"[6] Edward with 60,000 followers approached Henry with 48,000, "about nine of the clock in the morning. When each perceived the other they made a great ſhout, and at the ſame inſtant there fell a ſmall ſleet or

[1] Campbell's Chief Juſtices, i. 141.
[2] Dugdale, Orig. Chronica Series, p. 66. claus. i., Ed. IV.
[3] Foſs, Lives of Judges.
[4] Selden, Preface to De Laudibus, folio xlvi. note.
[5] Rolls of Parliament, vol. v. p. 479.
[6] Hol. iii. 278.

ſnow, which, by the violence of the wind which blew againſt them, was driven into the faces of King Henrie's armies, ſo that their ſight was ſomewhat dimmed, and they ſhot their ſheafe-arrows all to loſs, for they came ſhort of the Southern men by threeſcore yards." In ſpite of this bad beginning "the deadlie conflict continued ten hours in doubtful ſtate of victorie, uncertainlie heaving and ſetting on both ſides. The battle was ſore foughten, for hope of life was ſet aſide on either part, and taking of priſoners proclaimed a great offenſe, ſo every man determined to vanquiſh or die in the field; but in the end King Edward ſo courageouſly comforted his men, that the other part was diſcomfited and overcome, and fled to Tadcaſter bridge to ſave themſelves; in the mid-way whither is a little brook called Cocke, not very broad but of a great deepeneſſe, in which, what for haſte to eſcape, and what for fear of their followers, a great number was drowned. It was even reported that men alive paſſed the river upon dead carcaſſes, and that the great river of Wharfe whereinto that brook doth run, and all the water coming from Towton was coloured with blood. The chaſe laſted all night and the next day, the Northern men often turning upon their purſuers to the great loſs of both ſides, whoſe total loſs is ſet down at upwards of 36,000 ſlaine."

From this great blow the Lancaſtrians never recovered; Henry with Queen Margaret and the Prince fled to Berwick-upon-Tweed, and Forteſcue with them, as we learn from Leland, who writes that "King Henry, the Prince, the Queen, the Duke of Somerſet, Henry Duke of Exceſtre, the Lord Roos, Sir John Forteſcue Chief Judge of England, and Tailboys Erle of Kyme, being at York and hearing of this, fled firſt to Newcaſtle and then to Berwick delivering it to the Scots."[1]

We find Forteſcue ſtill on the Engliſh ſide of the border in the end of June, when, in attendance on King Henry, he was engaged in an encounter with the Yorkiſts at Brauncepeth near Durham, and at Ryton near Newcaſtle. Soon after theſe events he retired with Henry to Edinburgh.

At this period of Forteſcue's career in which his appointment as Lord Chancellor to Henry the Sixth muſt in one ſenſe or another have taken place, we may ſtop to conſider what claims he has to be enrolled amongſt thoſe who de facto filled the office of Chancellor of England. That he was Chancellor to Henry during his exile is a fact which has not been diſputed, but it is held by moſt writers that he never was Chancellor within the realm of England—we ſhall ſee how far this ſtatement is accurately true. It muſt, I think, be at once admitted that if Henry's legal power to appoint a high officer of State ceaſed upon the proclamation of Edward as King of England, it is highly improbable that he ever received a valid appointment, for Henry was in the power of his enemies until the Battle of St. Alban's on the 17th of February 1461, and certainly could not until that day have ſuperſeded George Neville who was up to that time nominally his Chancellor, although really under the

[1] Leland's Collectanea, vol. ii. p. 499.

Houſe of York, by the appointment of another perſon. There remained then only the ſhort ſpace of 15 days to the 4th of March, paſſed in tumult and confuſion, in which Forteſcue could have had the Seals before Henry's reign is generally held to have ceaſed. There is no entry on the records concerning the Great Seal between Neville's creation on the 25th of July, 1460, and the 10th of March, 1461, when he took the oaths to the new King.[1]

There was, however, a period of above four months from the Battle of St. Alban's, during which Henry was ſtill in England and in poſſeſſion of ſome, though but a ſmall part, of his dominions; for he is charged in the Act of his Attainder with levying war in his own perſon againſt Edward in Durham[2] on the 26th of June, 1461, and here, as we have ſeen, Sir John Forteſcue was with him. It ſeems very likely that one of his firſt acts upon regaining his freedom was to create a Chancellor, who by ſealing his writs with the Great Seal could help to keep up the appearance of kingly power when but little of its ſubſtance remained to him; and the very preſence in his retinue of the venerable and famous Lord Chief Juſtice of England would in itſelf naturally ſuggeſt ſuch an appointment. That Henry had a Great Seal after his expulſion we know from Queen Margaret's inſtructions to Ormond in Portugal where it is expreſsly mentioned. Thus Forteſcue may well have been Henry's Chancellor in England, and while there was ſtill ſome part of the country which acknowledged his rule.

This probability ſeems to have eſcaped the notice of ſome of his biographers, whoſe views of his claim to rank as Chancellor I proceed to give.

Spelman, in his liſt of Chief Juſtices, ſays of him: "Notior in ore omnium nomine Cancellarii, quam Juſticiarii, diu tamen functus eſt hoc munere, illo vix aliquando. Conſtitui enim videtur Cancellarius, non niſi a victo et exulante apud Scotos Rege Henrico ſexto, nec referri igitur in archiva regia ejus inſtitutio, ſed cognoſci maxime e libelli ſui ipſius inſcriptione."

Selden, in the Preface to his Edition of "De Laudibus,"[3] writes: "As to the promotion of Sir John Forteſcue, there is no doubt but that he was Chancellor in ſome ſort. But when, or to what purpoſe, whether even during the actual reign of Henry VI, or ſo as to exerciſe his office in Weſtminſter Hall, may be a queſtion. He accompanied the King into Scotland, and then, *or before in England*, he might be made Chancellor, as Sir Edward Hyde was in Charles the Second's exile."

The writer in the Biographia Britannica, lays ſtreſs upon the title of "Chief Judge of England,"[4] given to Sir John in the paſſage from Leland, quoted above, ſaying that "this

[1] Campbell, Lives of Chancellors, i. 370.
[2] Rolls of Parliament, v. 478.
[3] Forteſcue, De Laudibus, by Selden, 1737, folio. Preface, p. xlvi.
[4] Biog. Britt. Edition, 1750, vol. iii. p. 1696.

plainly ſhews that he was only Chief Juſtice when he attended his Maſter into Scotland," he, like others, aſſuming that the retreat to that country took place at once; but adds, "as from the time that he left King Henry there he never ſaw him any more, there ſeems to be no room to doubt that he received the Great Seal from that King there *as ſoon as it was known* that George, Biſhop of Exeter, afterwards Archbiſhop of York, continued to bear the title, and execute the office of Lord Chancellor by the authority of King Edward."

If this be correct, Forteſcue was for ſome months Chancellor in England; and the abſence of his name from the Roll of Chancellors is alſo accounted for.

Lord Campbell,[1] who writes of him with veneration, "ſuſpects that he had only the titular office of Chancellor in partibus," but, nevertheleſs, ſays that he feels called on to include him in his ſeries of Engliſh Chancellors; while many of the older writers, as Bale,[2] copied by Pits, Fuller,[3] Pole,[4] and Tanner,[5] ſtyle him Chancellor of England without any expreſſions of doubt, or qualification.

Sir John remained in Scotland with Henry upon his retirement there from Berwick, the Scotch King having, either from pity for his misfortunes, or in return for Henry handing over to him that town, allowed him to take up his abode in Edinburgh, when he was lodged in the Grey Friars,[6] a reſidence which his love of ſolitude ſelected.

Here Margaret's energies were ſoon employed in trying to engage the King of France to interfere in behalf of his nephew, her huſband, and ſhe prepared to ſail for that country with the Prince, but the death of Charles VII. at this time ſeems for the preſent to have ſtopped her, and, as the following letter ſhows, with good reaſon:—

LETTER *from* LORD HUNGERFORD *and* SIR ROBERT WHITYNGHAM *to* QUEENE MARGARET.

A la Reyne D'engleterre,

Eſcote,

MADAM,—Pleaſe it yor gode God we have ſith our comyng hider writen to yor Highnes thryes the laſt we ſent by Bruges to be ſent to you by the firſt veſſell that went into Scotland the oder two letters we ſent from Depe the t'on by the Carvell in the whiche we came and the oder in a noder veſſell but madam all was oon thyng in ſubſtance of puttyng you in knolege of the Kyng your Uncles deth whom God aſſoyll and howe we ſtade areſt and doo

[1] Campbell, vol. i. p. 370.
[2] Bale, Scriptores Mag. Britt. (8th century)
[3] Fuller, Worthies of England.
[4] Pole, Collections for Devon.
[5] Tanner, Bibl. Britt. Hib.
[6] Guthrie, Hist. Eng. vol. ii. p. 692.

yet, but on tuyſday next we truſt and underſtande we ſhall up to the Kyng yor Coſyn germayn, his comyſſaries at the firſt of our tarrying toke all our letters and writyngs and bere theym up to the Kyng levyng my Lord of Som'ſet in kepyng atte Caſtell of Arkes and my felowe Whityngham and me, ffor we had ſauff conduct in the Town of Depe where we ar yete. But on Tyyſday next we underſtande that it pleaſeth the ſaid Kyngs Highnes that we ſhall come to hys p'ſence and ar charged to bring us up Monsr. de Creſſell nowe Baillyf of Canſe and Monsr. de la Mot. Madam ferth you not but be of gode comfort and beware that ye aventure not your p'ſon, ne my Lord the Prynce by the ſee till ye have oder word from us in leſſe than your p'ſon cannot be ſure there as ye ar, that extreme neceſſite dryfe you thens and for God ſake the Kyngs Highnes be advyſed the ſame, ffor as we be enformed Therll of March is into Wales by land and has ſent his navy thider by ſee, and Ma Dame thynketh verily we ſhall not ſoner be delyvered but yt we woll come ſtreght to you w^t^aut Deth take us by the wey, the which we truſt he will not till we ſee the Kyng and you peiſſible ayene in your Reame, the which we beſech God ſoon to ſee and to ſend yeu that your Highnes deſireth. Writen at Depe the xxx^ti^ day of Auguſt. (1461).

Yo^r^ true Subgettes and Liege men

HUNGERFOLD,

WHITYNGHAM.

At the bottom of the copy of the Letter is added :—

Theſe are the names of thoſe men that ar in Scotland w^t^ the Quene. The Kyng Henry is at Kirkhowbre w^t^ four men and a childe. Quene Margaret is at Edenburgh and hir Son. The Lord Roos and his Son.

John Ormond
Will'm Taylboys
Sr John Forteſcu
Sr Thomas Fyndern
Sr Edmund Hampden
Sr Henry Roos
John Courtney
Myrfyn of Kent
Waynesford of London
Thos Thompſon of Guynes
Thos Brampton of Guynes
John Audeley of Guynes[1]
Langheyn of Irland
Thomas Philip of Ipſwich
Danſon
Thos Burnby
Borret of Suſſex
Sr John Welpdalle
Mr Roger Clerk of London
John Retford late Coubitt
Giles Sencklowe
John Hawt

[1] Fenn, Paſton Letters, vol. i. p. 246.

Henry, meanwhile, continued in Scotland, the Chancellor employing his leiſure in compoſing thoſe "wrytings ſent out of Scotteland," which he was deſtined afterwards to explain or refute to King Edward's ſatisfaction. He tells us that he was "Chief Councillor to the King in Scotland," and therefore muſt have had much to ſay to the various negotiations for his maſter's reſtoration, carried on with his party in England, as well as with foreign Potentates.

In November of this year, Edward the Fourth called his firſt Parliament at Weſtminſter. Both Houſes, entirely ſubmiſſive to the new King, who indeed left them no liberty to oppoſe him, declared the three laſt Sovereigns no better than uſurpers,[1] and, having annulled many of their acts, proceeded to paſs a moſt ſweeping Act of Attainder againſt Henry the Sixth, his Queen, and his Son, the Dukes of Somerſet and Exeter, with 148 Lords, Knights, Prieſts, and Eſquires;[2] among theſe, was Sir John Forteſcue. The acts of treaſon with which he is charged are the Battle of Towton, on the 29th of March, and the riſing or ſkirmiſhes at Brauncepeth and Ryton on the 26th of June.

Here are the ſentences which affect him:—

"And where alſo Henry Duke of Exceſtre, Henry Duke of Somerſet . . . John Forteſcue, Knight (with many beſides), on Sunday, called comynly Palm Sunday, the xxixth day of Marche the firſt yere of his reigne, in a field bitwene the townes of Shirbourne in Elmett, and Tadcaſt', in the ſaid Shire of York, accompanyed with the Frenſhmen and Scotts the Kynge's ennemyes, falſely and traitorouſly ayenſt their feith and Liegeaunce, then vexed werre ayenſt the ſame Kyng Edward, their rightwiſe true and naturall leige Lord, purpoſyng there and then to have deſtroyed hym, and depoſed hym of his Roiall Coroune and Dignite; and then and there to that intent, falſely and traiterouſly moved bataille ayenſt his ſeyd aſtate ſhedying therin the blode of a grete number of hys Subjetts." . . .

"And over that, when the ſaid' Henry late called Kyng of Englond the Sixth, and alſo Thomas Lord Roos, Thomas Gray, Lorde Rugemonde Grey, Humfrey Dacre Knyght, John Forteſcu Knyght, William Taillboys Knyght, Edmund Mountford Knyght, Thomas Neville late of Brauncepath in the Biſoprycke of Durham Clerk, Humfrey late of the ſame Squier, and Thomas Elwythe late of Caleys Squier, the xxvi day of June laſt paſt, at Ryton and Brauncepath in the Biſoprycke of Durham with ſtandards and gyturons unrolled, vexed werre ayenſt oure ſeid Lord Kyng Edward, purpoſyng to have depoſed hym of his Roiall Aſtate, Coroune, and Dignite, ayenſt their feith and Liegeaunce, &c. &c.

"It be declared and adjuged by th' aſſent and advis of the Lords Spũelx, and Temporelx, and Commyns, beyng in this preſent Parlament, and by auctorite of the ſame, that they

[1] Statutes at Large, vol. i. 1 Ed. IV. cap. i.

[2] Rolls of Parliament, vol. v. p. 463

[here the names are recited again, including Sir John Forteſcue, Knyght] for their traitoreſſe offences and tranſgreſſions afore declared, committed and doon ayenſt the ſeid Aſtate Coroune and Dignite of oure ſeid Soverayne Lord Kyng Edward the fourth, ſtand and be convycted of high treaſon, and forfeit all the Caſtelles, Maners, Londes, Lordſhips, Tenūtes, Rentes, Services, Fees, Advouſons, Hereditaments, and Poſſeſſions, with their appurtenances, which they or any of theym had, of eſtate of enheritaunce, or eny other to their or any of their uſe hadde, the ſeide fourth day of March, within Englond, Irlond or Wales, or Caleys, or in the Marches thereof."[1]

The eſtates which the Chancellor loſt by his attainder were ſoon after granted to adherents of the conquering party, his manor of Ebrington being given, as before mentioned, to Sir John Burg,[2] and other lands to John Lord Wenlock,[3] a zealous Yorkiſt.

It was not until the ſpring of the next year that Margaret went to France. She ſailed from Kirkcudbright in April, 1462,[4] with four ſhips and a ſmall attendance, landing in Brittany, where the Duke gave her an honourable reception,[5] and twelve thouſand crowns. She then proceeded to her father's Duchy of Anjou,[6] and finally to the Court of Louis the Eleventh at Chinon.

The new King was not warm in his ſupport of his kinſwoman's cauſe, but was at laſt prevailed on by her entreaties, and by the offer of Calais as a ſecurity, to lend her twenty thouſand crowns, and to allow Pierre Brezé, the Seneſchal of Normandy, to follow her fortunes with two thouſand men.

After a ſtay of ſeveral months Margaret ſailed from France, and after many adventures on the coaſt of Northumberland, where ſhe landed ſome troops who were forced by the Engliſh to re-embark with great loſs, ſhe with the remains of the expedition reached Berwick. Here Henry and the Prince joined her from Edinburgh, and a deſcent upon England was organized, when Bamborough, Alnwick, and other ſtrong places fell into the hands of the Lancaſtrians,[7] who were joined by the Duke of Somerſet and Ralf Percy, and by many of the inhabitants of thoſe parts. But when the Earl of Warwick arrived in the North with twenty thouſand men, and King Edward with as many beſides, the iſſue of the ſtruggle was no longer doubtful; and on the 17th of May, 1464, the Lancaſtrians were totally and finally defeated at Hexham, Henry himſelf eſcaping with difficulty. He fled once more to Scotland;[8] but after a time, urged, no doubt, to leave that country by the Scotch King, who had made terms with Edward the Fourth, he went into Lancaſhire and Weſtmoreland, where the people were attached to his cauſe and kept him hid; but being at laſt diſcovered, he was taken priſoner in June, 1465, and committed to the Tower, where he remained for ſeven years.

[1] Rolls of Parliament, v. 478.
[2] Atkin's Glouceſterſhire, p. 425; ſee Biog. Britt. p. 1994.
[3] Rolls of Parliament, v. 581.
[4] William of Wyrceſter's Chronicle, A.D. 1462.
[5] Lingard, v. 176.
[6] Guthrie, Hiſt. of England.
[7] Holinſhed (4to.), Vol. III. p. 282.
[8] Rapin.

Autograph Signature of Sir John Fortescue Chancellor to King Henry VI. attached to his letter to the Earl of Ormonde in the Impl. Lib. Paris

It would appear that Margaret and the Prince took refuge in the ſtrong fortreſs of Bamborough Caſtle, ſtill in the hands of their party.

Forteſcue, who had accompanied the Royal party in this campaign, was now finally parted from his unfortunate maſter. He remained with the Queen and Prince at Bamborough; and when it was determined that they ſhould proceed to the Continent, he reſolved to attend them, and after a ſhort delay embarked in their company at Bamborough, with ſome other perſons of note. Their names are preſerved by William of Worceſter, viz.:—

The Duke of Exeter,[1]
Sir John Forteſcue,
Sir Edmund Mundeforde,
Sir Edward Hampden,
Sir Henry Roos,
Sir Thomas Ormonde,
Sir Robert Whytyngham,
Doctor John Morton,
Doctor Robert Makerel.

With many beſides of lower degree, whoſe names are not recorded, to the number of two hundred perſons. They landed at Sluys, in Flanders, then part of the dominions of the Duke of Burgundy, and were hoſpitably received by the Count of Charolois, his eldeſt ſon, who took the Queen to Bruges, providing for the wants of the party with great liberality, and afterwards led them to his father's court at Liſle, where they remained for ſome time, the Duke giving a thouſand crowns for their maintenance. They poſſibly, however, outſtayed their welcome, for Rapin relates from Philip de Comines, that the Royal exiles here endured great miſery, and that the Duke of Exeter, before his rank was known, was ſeen by De Comines following the Duke of Burgundy's carriage barefoot.[2] The next journey was to Lorraine, where Margaret's father, René of Anjou, titular King of Jeruſalem and Sicily, was Duke. This prince, who had inherited from his father the adjoining duchy of Bar, ſucceeded to that of Lorraine in right of his mother, Iſabella, only daughter of the former Duke. He received his daughter and grandſon with kindneſs, and gave them and their followers a retreat in Barrois, or Berry, as the old authors write it. The place aſſigned to them was St. Mighel, a ſmall town on the right bank of the Meuſe, which there flows through a narrow valley ſhut in by high hills; the Engliſh exiles were lodged in the fortreſs.

It was probably at this time that Forteſcue, deſiring to forward Henry's cauſe, made the journey to Paris to which he preſently alludes; we know, however, that before the end of the year he was ſettled at St. Mighel. A letter from him to the Earl of Ormond in Portugal is extant in the Imperial Library in Paris, which will be read with

[1] William of Wyrceſter's Chronicle.

[2] Rapin, i. 600.

intereſt, as ſhowing the ſtraits and poverty to which he was reduced. It is very illuſtrative of the times and circumſtances; as are the inſtructions which he drew up at the ſame time for the Earl's guidance, and the high-ſounding Latin of the letter which he compoſed for the Prince to the King of Portugal. Not leſs ſo is the note of the former to Lord Ormond, "written with his own hand" when he could not have been more than eleven years old, the date of his birth being the 13th of October, 1453.[1]

I am not aware that any of theſe documents here given have been publiſhed before; they are from the Baluze collection.

LETTER *of* EDWARD, PRINCE OF WALES, *ſon of* HENRY VI., *to the* KING OF PORTUGAL, *aſking him to aſſiſt in the reſtoration of King Henry to the throne of England. Dated* 13 *December.*

SERENISSIME princeps. Poſt debitas recommendationes veſtrique incolumitatem optata n. Cum plurimos geſtis inclitis elucentes viros tacita mente perſcrutor, hos maxime cui virtutem et gloriam aſſequuti percelebri laude ſupra ſidera efferuntur, nullos clariores, nullos majori gloria apud mortales adornatos comperio his quos zelus, neceſſitudo, patria, caritas, ad geſta magnifica advocavit. Hos enim non ignis, non enſis, non gladius, non ipſa mors humani terror generis abſterrebat, nec quicquam arduum erat quod eis pro reipublicæ augmento ac defenſione durum aut difficile videbatur. Maximum itaque decus ſe putabant adeptos, cum ob virtutem maximum aliquid aggrederentur. In vobis igitur, illuſtriſſime princeps, optima mihi repoſita ſpes eſt, qui juſtitia, prudentia, fortitudine, temperantia, magnanimitate, ac omni tandem virtute et gloria, adeo polletis, ut nulli nunc orbe principum humanitate ſecundus videamini, ſicque polletis uti cum vires hauſerim et in viriles evaſerim annos, cæteros inter mundi principes veſtri ſimilem fore in re militari, probitate, et gloria ſumme exoptem. Hiſque veſtris virtutibus præclariſſimis ſumme congratulor, eoque magis jocundius atque feſtivius quo ex inclitiſſima domo Lancaſtriæ fama per mundum et ſuper æthera nota prodiiſtis, cujus jam ulciſci injurias horum eſt qui ab ea proceſſerunt. Topirum laudibus excelſis ac nunquam in ævum morituris extollebat antiquitas, ardua atque maxima paſſum, ut vi gladii Babylonios rebellantes ſubditos regi ſuo faceret; injuriam enim a ſubditis regi factam ſibi etiam factam aebat, adque jus regum et decus pertinere contra tyrannos ſeſe invicem totis viribus conſolari, defendere, adjuvare. Romani inſuper, dum nobilitate ac militari gloria per orbem floruere, tunc maximum decus ſe adepturos rati ſunt cum regiones, provincias, civitates, cum propinquos ſanguine, amicos, reges, aut principes injuria laceſſitos omni conatu etiam ad extremum ſanguinem defenderent. Namque juſticiæ non modica

[1] Lingard.

portio eſt injuriam proximo illatam, ac longe fortius ſanguini proprio, propulſare. Id ferme non modo poſitiva aut civium politica lex, ſed ipſa natura ſuadet atque jubet; hoc ipſos quaſi frequentibus ſtimulis contra tyrannos contraque rebelles ad enſem, ad laneeam, ad omnia denique armorum genera viribus totis urgebat. Quorſum hæc cum vos ipſe ſitis, inclitiſſime princeps, quem non minori laude quam Scipiones ipſos, Fabios, quam Fabricium, quam Achillem, quam Hectorem, aut Herculem ipſum, admirando animi robore linguæ pæne cunctorum indefeſſe glorificant. Id a tanto Principe ferendum non æſtimo ut regius domini ac patris mei ſtatus ſplendorque Lancaſtrie domus, cujus ipſe columna eſtis, tyrannorum rebelliumque malitia obſcuras ad tenebras excidat, cujus ante hac fama præfulgens per orbis reſplenduit climata. Meminiſſe igitur vos regii ſtatus, meminiſſe domus et ſanguinis, meminiſſe ligæ ab olim contractæ velim, ut jus ac regale decus ad læſi regis defenſionem, ad domus et ſanguinis tuitionem natura, amicitiæ vero vinculum tales inter principes ab antiquo contracte inconvulſe ſervandum lex ipſa atque rei publicæ zelus commoveat. Parcite, precor, ſi importunus videar; nam res patris agitur, res filii agitur, et omnium principum res ac cauſa agitur; ſanguinis etiam ipſa conjunctio me magis his, licet primis meis litteris, audacem facit. Si quid igitur harum contemplatione agere hac juventute mea velitis, cum ad annos pervenerim fixum vobis ac ſolidum poſtfuturis temporibus in omni re veſtra conſanguineum, et ſi ſic placeat, ſine fuco amicum comparabitis. De injuriis vero domino ac patri meo illatis latior eſſem niſique conſanguineus meus, comes Ormundiæ, qui jam vobiſcum eſt, omnia dicet, quæ certe talia ſunt ut neminem hominum arbitror quem non ad larga lacrimarum flumina commoverent. Pro ipſa autem ampliſſima humanitate veſtra quam ſibi, necnon magiſtro Rogero, conſilii domini mei clerico benemerito, feciſtis, quantas poſſum immo infinitas gratias et do et offero, poſtea, duce Cariſto, ſecundis temporibus daturus ampliores, qui vos feliciter ac diu regnare faciat ad nominis veſtri decus ſempiternum.

Ex Sancto Michaeli in Barro, tercio decimo Decembris.

Walliæ[1] princeps veſter ad vota paratiſſimus conſanguineus

EDWARDUS.

LETTER *from* SIR JOHN FORTESCUE *to the* EARL OF ORMOND, *containing directions how to proceed in his miſſion into Portugal, to obtain aſſiſtance for Henry VI, at that time dethroned by Edward IV.*

RYGHTE worſhipfulle and myne eſpecially belovyde lord, I recommaunde me to you; and

[1] The concluding part of this letter is in the bold but unformed writing of the prince. The ſeal is extant. There is no addreſs, but on the back is written "Pro principe," concerning which, ſee the next letter. The paper is ſtrong, thick, and highly glazed. No water-mark is viſible, but the wire-marks of its fabric are clearly perceptible.

it is ſo that in the feſte of the Concepcioune of our Lady I reſceyvide, at Seynte Mighal in Barroys, frome you a lettre writyne at Porte in Portingale, on Monday nexte before the feſte of Seynte Mighel, to my righte ſinguler comfort, God knowith. Of which lettre the quene, my lord prince, and alle theire ſervantes were fulle gladde, and namely of youre welfare and eſcapynge the power of youre ennymyes. And it is ſo that the quene nowe deſirethe you to do certayne meſſage frome here to the kynge of Portyngale, of whiche ye moure clerely underſtande here entente by an inſtructione, and alſo by here lettres, whiche here highneſſe now ſendithe to you by the berer hereof. Wherfore I write nowe nothynge to you of tho materes.

And as touchynge the ſauf conducte whiche ye deſire to have of the kynge of Fraunce, it were gode that ye hadde it. And yet yf his hyghneſſe do to us nothynge but righte, the quenes certificat, whiche we ſende to you herewith, ſhulle be to you ſwerte ſufficiant. Noetheleſſe I counſeille you not to truſte fermely theruppone, and therby to aventure you to paſſe thorghe his lande, for he hathe made many appoyntements withe oure rebelles, by whiche it femythe he hathe not alwey entended to kepe the peace and triwes whiche he made withe us; but yet I knawe no cauſe that he hathe to breake hit, nor hetherto he hathe not takene nor impriſoned any mane of oure partie by any ſoche occaſione. And Thomas Scales hathe ſente me worde that he hopithe to mowe gete, by the meanes of my lord Senyſchalle, a ſauf conducte for you. And elles my lord of Kendale canne fynde the meanes howe ye mowe paſſe ſoche parties of Gyane, Langdok, and other, whereas moſt juperte is, as ye ſhulle be in no perille. My lord of Somerſet that now is and his brother come frome Britayne by Parys thorghe Fraunce unto the quene withe vj. horſes, and no mann reſonyd ham in there way. And ſo didde I from Parys into Barroys; but yet this is no verrey ſurety to you. Wherfore your aune wyſdome moſt gyde you in this caſe, not truſtynge myne alvice, that knawe not the maner of this contrey as ye do; but yet I wote welle that a bille ſigned with my lorde Senyſchalle is hande ſhall be ſufficiant unto you to paſſe thorghe outelalle Fraunce.

My lord, herebuthe withe the quene the dukes of Exceſtre and Somerſet, and his brother, whiche, and alſo ſir Johne Courtenay, buth deſcended of the houſe of Lancaſtre. Alſo here buthe my lord Prive Seal, maſter Johne Mortone, the biſshope of Seynte Aſſe, ſire Edmond Mountford, ſir Henry Roos, ſir Edmond Hampdene, ſir William Vaux, ſir Robert Whityngham, and I, knyghtes, my maiſter youre brother, William Grymmeſby, William Joſepe, ſquiers for the body, and many other worſhipfulle ſquiers, and alſo clerkes. We buthe alle in grete poverte, but yet the quene ſuſteynethe us in mete and drinke, ſo as we buthe not in extreme neceſſite. Here highneſſe may do no more to us thanne ſhe dothe. Wherfore I counſeille you to ſpend ſparely ſoche money as ye have, for whanne ye come hether ye ſhulle have nede of hit. And alſo here buthe maney that nede, and wolle deſire to parte with you of youre aune money; and in all this contray is no manne that wolle or may lene you any

money, have ye never ſo grete nede. We have here none other tythinges, but ſoche as buthe in youre inſtruccione.

Item, yf ye fynde the kynge of Portingale entretable in oure materes, ſparithe not to tarie longe withe hym. And yf ye fynde him alle eſtraunge, diſpendithe not your money in that contrey in idilce; for after that ye came hithere, hit is like that ye ſhulle be putte to grete coſtes ſone uppone, and peradventure not long tarie here.

Item, my lord Prince ſendithe to you nowe a lettre writyne withe his awne hande, and another lettre directed to the kynge of Portyngale, of whiche I ſende nowe to you the double encloſyd hereyn.

I write at Seynt Mighel in Barroys, the xiij. daye of Decembre.

Your ſervant,

J. Fortes'u.[1]

My lord, by cauſe we knew not verrely the kynge of Portingale is name, the quene is lettre hathe no ſuperſcripcione, nor the lettre fro my lord Prince; but ye moure knowe ham alſo welle by the ſeales as by this, that in the ſyde where the ſeal is ſette of the quenes letter is writyne thiſe wordes, "Pro Regina," and in like wyſe in my lordes lettre is writyne, "Pro Principe." And I ſende to you hereyn ſoche wordes of ſuperſcripcion as ye ſhalle ſette uppone bothe lettres, whiche wordes buthe writyn withe the hande of the clerke that hath, writyne bothe lettres.

Item, the berer hereof had of us but iij. ſcutes for alle his coſtes towardes you, by cauſe wee hadde no more money.

(*Dorſo.*) To the righte worſhipfulle and my ſingulerly belovide lorde, the Erle of Ormonde.

Instructions *given by* Queen Margaret *to the* Earl of Ormond *reſpecting his miſſion to Portugal to obtain aſſiſtance for the reſtoration of* Henry the Sixth.

Here folowithe an inſtruccione made by the Quene of Englande unto the erle of Ormonde and to maiſter Roger Tonge, clerke of the kynges counſeille of Englande, for the expedicione of ſoche materes as the Quene deſirethe to be ſpedde at this tyme for the kynge her huſband withe the kynge of Portyngale here moſt dere coſyne.

First, that they thanke the kyng, here ſaide couſyne, of the favoure and gode wille whiche

[1] "*Your ſervant, J. Fortiſcu,*" is in the autograph of Sir John. The ſeal given above is that which he commonly uſed.

he hathe alway borne and ſhewyd to the kynge here huſbande; and namely in this now, his grete trouble and hers. And in ſpecialle, of the grete favoure whiche he ſhewyde unto William Joſeꝑ, ſquier for the kynges body, in his late beynge withe hym by here commaundement for the kynges materes, and pray hym of like contynuaunce.

Item, that they lete here ſaide couſyne clerely underſtonde that (ibleſſed be Almyghty God,) the kynge here huſband is in gode hele, out of the handes of his rebelles, and in ſewerte of his perſone, as here highneſſe hadde late writynge frome him, enſealed withe his ſignet and ſignyde with his owne hand, whiche is ounedoutedly knawene to here ſelfe and to alle here counſeille.

Item, the quene wille that the ſaide erle and clerke ſaye unto the ſaide kynge here couſyne howe that the kynge here huſbande and alſo here ſelfe have a fulle, ſinguler, and ferme truſte uppone the gode wille, frenſhipe and ayde of hym in this theire gretteſt and extreme neceſſite; conſiderynge not onely the nyghneſſe of theire blode, and that they, bothe kynges, buthe deſcended of the houſe of Lancaſtre, whiche alway hathe bene rennomyde of ſinguler kyndeneſſe, faythe and ſtabilneſſe, but alſo the longe contynewyd amytee, peace, and gode wille, whiche have be betwene the ſame kynges and theire reaumes. And moſt the quene hathe in here mynde of how grete nobleſſe, wyſdome, and prueſſe here ſaide couſyn of Portingale is nowe namyd and knowene through oute the worlde, and therfore amonge other cauſes choſyn and made by the ſaide kynge here huſband, while he was in proſperite, and by the hole chapiter of the ordre of the Garter, a knyghte of the ſame ordre, by whiche conſideracione ſhe hathe noo litelle truſte of the ayde of the ſaide kynge here couſyne; but moſt by conſideracion that he is a Chriſtian kynge, and the wronge whiche nowe is done to the kynge here huſband by his oune ſubgettes and liegemen is an injurie and diſhonoure to alle kynges, and mater of boldeneſſe to alle ſubjectes for to rebelle ayen theire ſovereyne lordes, to the perille and unſiwerte of alle princeſſe, yf it be not ponyſshed. And as a wronge done to a man of the Chirche whanne it ſownythe to the diſhonoure or perille of the remenant of the Chirche is, and ſo aughte be, takyne as a thynge harmefulle to alle the Chirche, and in like wyſe done knyghtes whanne any thynge is done to the diſhonoure of knyghtehode, and wymmen, whanne any thynge is done to the diſhonoure of wymmenhode, moche more aughte every kynge make hym ſelfe partie whanne any thynge is done to the diſhonoure or perille of the religione and eſtate of kynges.

Item, that they lete here ſaide couſyn underſtande howe that the more partye of the people of England, and namely the beſt diſpoſede men of the ſame, kepyne truwely and fermely theire faithe and love to the kynge here huſband, and fayne wolde ſhewe ham ſelfe ſoche, but they dar not do ſo as well for fere of tyrannie and mordre whiche ſhuld be done uppon ham as by cauſe they have no grete lorde to be theire capitayne that wille and darre ſhewe hym ſelfe ſoche and kepe the fylde, while the kynges welle diſpoſede people myghte

be aſſemblede and come unto hym. Wherfore it ſhalle nede that the quene gate ſome notable and manly prince, or other capitayne, accompanyed with iij. m^e^. menne at the leſt welle garnyſshed withe habilymentes of werre, whiche myghte take and kepe a fylde in ſoche parties of England as the quene's counſeille knowithe beſte diſpoſede to this caſe, into the tyme the people myghte by boldneſſe of ham ſhewe ham ſelfe and come unto ham. Whiche and hit were done they ſhulde be in myght ſufficiant; namely, yf thanne the kynge were withe ham in perſone, for by comfort of his preſance they ſhulde ſone be grete in nombre, and his rebelles ſore ferde to come agayne hym. And ſoche as ſhulde be broughte thereto by his rebelles wolde thanne be fayne to come ynne to him, and have his grace, levynge the ſame rebelles partie or turnynge uppone ham, as is moſt like. And as the quene is faythfully informede, the moſt partie of the comyne that buthe nowe ladde by the world fayne do. Wherfor yf the kynge, here ſaide couſyn, myghte be entretede to helpe the kynge here huſband in this caſe withe a capitayne and the nombre of iij. m^e^. men, here counſeille ſeethe clerly that the kynge here huſband ſhuld thereby be ſurely broughte into his reaume and ſette in reſte in the ſame, and that thenne by that meane the kynge of Portingale myght have at his neceſſite at his oune wille the hole myghte of England to reſiſte and chaſtiſe his ennemyes, and to defende and helpe his frendes, and ſo in alle his nedes have the hole myghte of bothe reaumes.

Item, the Chaunceller of England and other perſones, whiche buthe nowe in thiſe parties have ſufficiaunt auctorite and power under the kynges grete ſeal to bynde the reaume of England, and alle other of the kynges poſſeſſions and lordſhippes, for the repayment of alle ſuche coſtes and expenſes as ſhalle be done for the kynges cauſe in this caſe. And wolle be alwey redy to make the ſureties thereof, whenne ſo ever hit ſhalle be thoughte unto the queene neceſſarie that they ſo do.

Item, yf the ſaide erle and clerke fynde the kynge of Portingale lovynge and tender to the kynges partie, and of gode hele to helpe hym in his quarelle, thanne they mowe deſire the ſame kynge to write to the Emperoure and to the Empereſſe his ſuſter, whiche alſo is diſcended of the houſe of Lancaſtre, to ſhewe theire favoures and gode wille to the ſaide quarelle, and to helpe in that they maye, that the Pope and the collage of Cardinales do the ſame. And in like fourme that the ſame kynge of Portingale write to my lord Charles, whiche alſo is diſcended of the ſame houſe, commendynge hym of his perſeverant kyndneſſe whiche, after the nature of that houſe, he ſhewithe to the kynge his couſyne[1] of Englande in his grete trouble, and praye hym of contynuaunce, letyng hym wete that he wolle do the ſame.

Item, ſithen the kynge of Spayne hathe weddede another ſuſter to the kynge of Portin-

[1] Henry III. married, in 1388, Catherine daughter of the Duke of Lancaſter.

gale, he maye the better be entretede that he allie hym not withe the kynges rebelles, but be welle willede to the kynges partie, and that we mowe have free paſſage throughe his reaume. And yf he wolde take oure partie, we myghte thanne be myghty ynowe bothe by ſee and by lande, and he therby have with us a perpetualle peace, and thanne have alle oure myghte ayene his ennemyes, whiche ſhulde be the gretteſt gode that of many yeres hathe comyne to his reaume; and, namely, for the merchandiſes and ſhippes of the ſame. And theſe ij. kynges myght peradventure cauſe us, and theyme ſelfe by the means of us, to make and have a perpetualle peace withe the reaume of Fraunce.

Item, the kynge of Portingale may ſone fynde the meanes howe alle ſoche cardinales of his reaume and of Spayne, as buthe in the courte, mowe be made frendely to oure partie.

MARGARET.[1]

(*Dorſo.*) To my lord of Ormonde.

HOLOGRAPH LETTER *of* EDWARD PRINCE OF WALES, *ſon of* HENRY VI, *to the* EARL OF ORMOND, *upon his miſſion into Portugal, to obtain aſſiſtance for the reſtoration of King Henry.*

COUSIN Ormond, I grete yow hertly welle, acerteynyng yow that I have herd rythe good and honorabele report of your ſad, wiſe and manly gyding ageynſt my lordis rebellis and your adverſaries, in the witche ye have purcheaſed unto yow perpetually lawd and worſhip. And I thanke God, and ſo do ye allſo, that ye at alle tymes under His proteccione have eſcaped the cruelle maliſe of your ſayd adverſaries.

And for aſmotch as I underſtand that ye ar nowe in Portingale, I pray yow to put yow in the uttremoſt of your devoir to labore unto the kyng of the ſayd royalme for the forderance and ſetyng forthe of my lord in the recuvering of his ryght and ſubduing of his rebellis. Wherin yf ye ſo do, as I have for undowted that ye wyll, I truſt ſume frute ſhalle folue, with Godis mercy, witche ſpede yow well in alle your workes.

Writen at Seynt Mychael in Barr, w^t^ myn awn hand, that ye mey ſe how gode wrytare I am.

EDWARD.

(*Dorſo.*) To my coſyñ the Erle of Ormonde.

The letter from Margaret to King Alfonzo, mentioned by Forteſcue, has not been preſerved.

The King of Portugal at this time, whoſe name was not known to Forteſcue, was

[1] Margaret R., the Queen's autograph.

Alfonzo V, his grandmother was Philippa, daughter to John of Gaunt the Duke of Lancaſter,[1] who married Joam I. of Portugal in 1403.

The Emperor of Germany was Frederick III, married to Eleonora, daughter of King Edward of Portugal. The King of Spain was Henry IV, married to a Portugueſe Infanta; he was alſo related to Henry VI. of England in the ſame degree as his wife, his grandmother being Catherine, another daughter of the Duke of Lancaſter.

The Earl of Ormond above mentioned was John, the ſixth of that title; he was preſent with his elder brother, James fifth Earl of Ormond, and Earl of Wiltſhire, at the battle of Towton, and was in conſequence attainted; he ſucceeded nominally to his brother's Earldom of Ormond upon the beheading of the latter by the Yorkiſts at Newcaſtle, (May 1, 1461), and forthwith fled to Portugal.

We find Forteſcue, after a ſtay of ſome months at St. Mighel, again engaged in preſſing his maſter's cauſe upon the French King. Henry ſent him his credentials as one of his ambaſſadors from Edinburgh in March; and he ſoon after accompanied to Paris the famous Lancaſtrian Jaſpar Tudor Earl of Pembroke, Queen Catherine's ſon by her ſecond huſband, Owen ap Tudor, and therefore half brother to Henry.

There is ſome mention of this journey in a deſpatch from the authorities at Rouen to their King, announcing the arrival of Pembroke and "the Chancellor of England," from which it appears that Louis, who wiſhed to come to terms with Edward IV, had already thought it wiſe to withdraw the right of free acceſs to him and his country which Henry's friends had enjoyed, by requiring that all Engliſhmen ſhould be furniſhed with a ſafe-conduct before they were allowed to paſs through France.

Sir John had joined Pembroke in Flanders, and there learning the need of ſome protection, they had recourſe to the friendly Count of Charolois, who gave them letters to ſmooth their way to Paris.

Here follows the diſpatch:—

12 June.

Notre ſouverain Seigneur nous nous recommandons a votre bonne grace tant et ſi tres humblement comme plus povons. Et vous plaiſe ſavoir notre ſouverain ſeigneur que au jour duy ſont entrez par congie en cette ville de Rouen le Comte de Pennebroc, et Meſſieurs Jehan Forteſcu, chevalier, chancellier du Roy Henry DAngleterre, le quelz ſont venus devers nous et nous ont remonſtre que de par le dit roy Henry ilz eſtoient envoiez comme ambaxadeurs devers vous et avoient prins la charge ſoubz la confidence du congie general daler et venir par voz pays quil vous pleuſt octroyer en la faveur au dit roy Henry a tous les ſubgiez tenans ſon party. Mais pour ce quilz avoient ſceu, eulx eſtans en Flandres, la

[1] Hume, iii. 548.

deffenſe generalle fait aux Anglois de non eulx trouver en votre royaume ſans avoir ſaufconduit, ilz eſtoient tournez devers Monſeigneur de Charolois, qui leur avoit octroye, pour leur ſeurte, certaines lettres requiſitoires a tous voy juſticiers et lieuxtenans, leſquelles ilz nous monſtrerent, enſemble unes lettres miſſives que nous eſcripeoit en leur faveur mon dit ſeigneur de Charolois pour les laiſſer paſſer, ainſi que porrez veoir, ſe ceſt votre bon plaiſir, par icelles lettres miſſives et meſmement par le double des dites lettres requiſitoires de mon dit Seigneur de Charolois cy dedens encloſes, et nous requeroient ſeurte de aler devers vous, diſans quilz avoient lettres que mon dit Seigneur de Charolois vous eſcripeoit pour leur fait. Sur quoy, ſire, apres que avons debatre la matiere avec aucuns de votre conſeil eſtans pardua, avons remonſtre aus dis conte et chancellier que au regard de la deffenſe qui faicte avoit eſte, elle eſt generalle pour tous les Anglois, tant de ceulx du coſte du Roy Henry que de lautre part par complaintes qui vous avoient eſte faites des inconvenien; qui eſtoient advenus et povoient advenir a voz ſubgiez par courſes et pilleries par raiſon de la frequentacion que avoient eue par dua ceulx du party du dit roy Henry dont aucuns ſeſtoient tournez de lautre coſte et pour autres cauſes que a ce vous avoient meu, et puis que ainſi eſtoit que la deffenſe avoit ainſi eſte faicte, et par (ici[1]) publique que a nous neſtoit pas de y toucher, mais toute voys que conſidere leur cas et quilz affirmoient aler devers vous, et auſſi quilz diſoient porter lettres de mon dit Seigneur de Charolois ne leur donnerions aucun empeſchement et adviſaſſent a ce quilz avoient a faire. Par quoy, Sire, ilz ont prins le chemin de tirer devers vous comme ilz dient. Et pour ces cauſes envoyons ce meſſage en toute diligence devers vous, afin que en ſoiez adverty avant leur venue, en enſcrivant ce qu il vous a pleu nous eſcripre et commander de vous advertir tousjours de ce qui ſurvendroit des nouvelles des dits Anglois pour on ſurplus ordonner votre bon plaiſir. Notre ſouverain Seigneur nous prions le Benoiſt-Filz de Dieu quil vous ait en ſa ſaincte garde, et vous doint tres bonne vie et longue et accompliſement de voz tres nobles deſirs.

Eſcript a Rouen le xiij jour de Juing. Vos tres humbles et tres obeiſſans ſubgiez et ſerviteurs

J evesque de Saint Bruc
Louys Destouteville
et Johann Arnoulfin
E. Picart.

(*Dorſo.*) Au roy noſtre ſouverain ſeigneur.

In another hand,

S. Brioc, Eſtonteville, Arnoulphin, & Picart.

[1] Indiſtinct in MS.

Sir John was the bearer of a ſpecial letter of introduction for himſelf from King Henry the Sixth to his couſin of France, which teſtifies to the eſteem in which he held the perſon and ſervices of his "Friend and loyall Chancellor:"—

LETTER *from* HENRY THE SIXTH *to* LOUIS THE ELEVENTH. *Dated Edinburgh, 28 March.*

TRES hault et puiſſant prince, tres chier et tres ame couſin germain de France, nous ayons eſte bien amplement informer pur pluſeurs foiz que tousjours vous eſtez monſtre notre bon couſin et amy, et vous eſtez tousjours bien encline en toutes les affaires de nous et la recouvrance de notre dit royaume, a voz grans coſtz et deſpens, tant de gens, dargent, comme autrement, dont tres fort nous en reputons tenuz a vous.

Nous envoyons preſentement par devers vous pluſeurs de noz gens et ambaxadeurs, comme plus a plain pourrez veoir par noz aultres lettres que vous reſcriprons, entre leſquelx noz gens et ambaxedeurs y eſt noſtre amie et loial chancellier Jehan Forteſcu, chivalier, au quel ſommes fort atenuz . . . . a ſes deſpens. Nous a tousjours tenu notre eſtat et fait pluſeurs aultres ſervices, dont luy ſommes fort atenuz. Pur leſquelles choſes tres hault et puiſſant prince, tres chier et tres ame couſin, nous vous prions tant et ſi affectueuſement que plus pouvons, que celleci noſtre Chancellier en faveur et priera vous vueillez favourablemen traictier, et luy ſecourir et aider, comme a notre propre perſonne, en toutes les neceſſitez e affaires quil peut avoir, tant pour nous et nos affaires comme pour luy meſmes; a fin quil puiſſe congnoiſtre que noz prieres luy aient prouſitte en aucune maniere. Et quant Dieu plaira que nous aions la joiſance et recouvrance de notre dict royaume, nous ſerons avecques vous en telle maniere que toute voſtre noble royalle majeſtie naura james cauſe de ſe doubter en vous priant que vuellez toujours de mieux en mieux continuer ainſi comme bien y avons voſtre ſingulier et parfaite confiaiance aidant le Benoiſt Filz de Dieu, tres hault et puiſſant prince tres chier et tres ame couſin, quil vous vueille avoir et tenir en ſa ſainct et benoiſte garde.

Donne a Edynburghe le xxviij jour de Mars

HENRY.

(Addreſſed,) A tres hault et puiſſant prince noſtre tres chier et tres ame couſin Germain ame de France.

NOTE.—In endeavouring to fix the dates of the Letters here printed, I have taken it as certain that the battle of Hexham was fought in April or May, 1464, and that Henry VI. was taken priſoner in the month of June, 1465.[1] It will thence follow that the Letter and Inſtructions to the Earl of Ormond were written in 1464, and that Henry's letter to Louis XI. to introduce Sir John Forteſcue, and the Rouen dispatch, are to be aſsigned to 1465.[2]

[1] Mackintoſh. [2] Engard.

Louis was not moved by the repreſentations of the ambaſſadors or by Margaret's appeals, to take any ſteps for Henry's reſtoration. He had made a truce with Edward, and although his leanings were always towards the Lancaſtrian party, he muſt have looked upon that cauſe as already loſt, when the news reached him about this time, of Henry being taken priſoner, and ſent to the Tower. There was therefore nothing left for Forteſcue but to return to Barrois, and there, with his fellow-exiles, to watch the courſe of events in England.

For ſome time, probably for ſeveral years, nothing happened to raiſe the hopes of the Lancaſtrian exiles. Queen Margaret was untiring in her applications to foreign monarchs, and in her endeavours to ſtir up her friends in England, and the Chancellor was largely engaged in conſultations and correſpondence, with the ſame object. Some of his expreſſions would ſeem to imply that he attended the Queen and Prince in their journeys to the Court of Louis. He alſo undertook the education of Edward, at leaſt ſo far as to inſtruct him in the laws of his country, and the duties of a King of England.

"Forteſcue," ſays Amos, "conceived that he was purſuing a judicious courſe for ſecuring the future happineſs of the Engliſh nation in forming the character of the heir apparent to the throne, and acquainting him with the duties of a patriot king: a taſk which, in later times, even Hampden did not look upon as derogatory to his talents, or incompatible with his independence."[1]

Two Treatiſes remain, drawn up, as he tells us, with that intent; the firſt in order of time was entitled, "De Naturâ Legis Naturæ," divided into two parts, the ſecond, and more famous, the "De Laudibus Legum Angliæ." This laſt was thrown into its preſent form, if not compoſed, during the latter part of his ſtay in Barrois; for he ſpeaks in it of the time when the Prince left England, as long ago, when he was too young to recollect much about his own country. As to the "De Naturâ," we know that at leaſt the ſecond part of it was written in Scotland, being "the Latin Book" to which Forteſcue refers, in his "Declaracioun on Writings from Scotland."

While Forteſcue was thus at once engaged in inſtructing the Prince how to reign over Engliſhmen, and in leading the ſchemes and negotiations which, as he hoped, were finally to enable his pupil to put into practice the maxims impreſſed upon him, events of the moſt important kind were approaching in England. The Lancaſtrians, although humbled and ſilenced, were ſtill very numerous. On more than one occaſion emiſſaries from Queen Margaret had been found trying to excite the people to inſurrection.

Edward the Fourth, by his marriage with Elizabeth Woodville, and ſtill more by the honours and favours which he heaped upon her relations, had diſguſted the leading nobility,

[1] Amos, Introduction to De Laudibus.

and in particular the great family of the Nevilles, with the great Earl of Warwick at their head. This powerful and arrogant lord[1] became ſo diſcontented that he ſtirred up a rebellion in Lincolnſhire, and when it was put down by the King, took his departure to France, with the Duke of Clarence, whom he had found means to perſuade to join the malcontents againſt his brother the King, and who had married one of Warwick's daughters. His object was to injure Edward with that monarch, who, indeed, was always inclined to the Houſe of Lancaſter, and was now diſpleaſed with Edward for giving his daughter in marriage to the Duke of Burgundy, and concluding with him a treaty of commerce.

Here were hopes for the Lancaſtrian exiles! the moſt powerful ſubjects in England changing ſides in their favour, and the King of France offended by their rivals, ready to take any opportunity to thwart them that might offer itſelf. Sir John was quite alive to the advantages to be gained from theſe changes; accordingly, we find his pen in full activity, laying before Louis everything that could be urged to ſhow what he riſked by ſupporting Edward, and what he could not fail to gain by a vigorous interference for Henry.

He preſented to Louis a memoir upon Edward's claim to the crown of England, and the pretenſions which he put forward to that of France alſo—refuting them both, as we are told, and "ſhowing that he has no right whatever to either." His object, no doubt, was to frighten Louis. This document he put into the ſhape of a book. He writes again to ſhow that peace with England muſt always be uncertain ſo long as Edward reigned, while on the other hand, if Henry was in power, the two nations would be ever in amity—giving, as we are told, his reaſons at length.

After ſome time longer he alarms the French King by telling him of Edward's late declaration in Parliament, announcing his reſolution to invade France in perſon with a large army; to prevent which calamity, Louis is told how he may keep Edward employed at home, by becoming himſelf the aggreſſor, for, with even a ſmall army, he would ſo encourage the Lancaſtrians, that they would ſpeedily drive Edward away, and reſtore his maſter, and then only could a laſting peace be made between the two kingdoms; for means might be found to induce Edward to ſubmit quietly to what he could not help. We are not told what theſe were, but his plan may have been that which was afterwards actually made the ſubject of an Act of Parliament during Henry's renewed reign, namely, to allow the Crown, on failure of Henry's heirs male, to go to the Houſe of York, ſetting aſide for this purpoſe the daughters of the Houſe of Lancaſter; for Forteſcue had written and argued in "De Naturâ" againſt the ſucceſſion of women to "ſupreme government." He aſks to be allowed to lay before Louis himſelf, or before ſome one in his confidence, other more ſecret matters which it would not be prudent to commit to writing.

[1] Holinſhed, A. D. 1468, iii. 290.

None of theſe productions have been preſerved, but the following notice of them is given from the Imperial Library in Paris:—

A. D. 1470.

Le Chancellier Dangleterre a baillie ung grant memoire declaratif des droiz que le roy Edouart pretend a la couronne Dangleterre, et apres a la couronne de France; et par le quel en oultre il monſtre que le dit roy Edouart ne peult aucune choſe reclamer es dites couronnes de France et Dangleterre, et quil ny a aucun droit par les moyens quil recite et declaire on dite memoire le quel eſt en forme de livre. Ceſt devers Monſieur le Chancellier.

Apres ung autre memoire aſſez longues, ou il repilogue en brief leffect et ſubſtance du dit grant memoire, en y adjouſtant les moyens par les quelz il luy ſemble que pax perpetuelle ſe peut bien faire entre le roy et le royaume de France dune part, et le roy Henry et le royaume Dangleterre dautre; et en quoy le dit roy Edouart ſe couſtendra, vueille ou non, et quil neſt poſſible au dit roy Edouart de faire paix perpetuelle entre les dits deux royaulmes, et que ſe de ſa part il avoit fait ſi ne pourroit elle tenir; le quel memoire contient douze grans articles.

Subſequemment baille ung autre memoire, aſſez brief, on quel il declaire que on parlement dernierement tenu en Engleterre ee roy Edouart a promis a la communite du royaulme quil fera groſſe armee pour venir en France, et quil y viendra en perſonne, ſur quoy le dit Chancellier eſpere demonſtrier moyens par les quelz le roy Dangleterre ſera tellement trouble que le dit roy Edouart noſera partir du royaulme, et quil naura argent ſouffiſant pour la deſpence quil fauldra faire pour la dite armee.

Il entend auſſi monſtrer les moyens par les quelz le roy legierement desjettera le roy Edouart du royaulme Dangleterre, et remettra ſus le roy Henry, ſans grant armee et ſans grans fraiz.

Il dit oultre quil aurera moyens par les quelz paix perpetuelle ſe pourra bien faire entre les deux royaulmes de France et Dangleterre.

Dit avecques ce quil y a autres choſes plus ſecretes jacoit-ce[1] quelles ne ſoient pas de plus grans poix qui neſt ja beſoing mettre en eſcript, et quelles vallont mieulx dictes de bouche a cauſe des ennemiz et contredicteurs de la dite matiere, des quelles il revelera au roy ou a ſes commis quant le plaiſir du dit ſeigneur ſera.

Item, il y a ung autre grant memoire contenant ſix articles, dont on premier article le dit Chancellier expoſe que, concurrens enſemble le conſeil du roy et de la royne Dangleterre, il ſemble audit Chancellier, par les moyens quil ouvrira, le mariage ſe fera entre le prince de Galles et la fille du conte Waruch. Par le moyen du quel mariage le dit conte de Waruch

[1] Sic in MS.

et ſes amys demoureront en ſeurte, et aura le dit conte le principal gouvernement on royaulme; et que par la favour de luy et des amys et loyaulx ſubgietz du roy Henry, la royne et le prince pourront avoir plus legiere entree dedans le royaulme.

Secondement, le dit Chancellier eſpere trouver moyens par les quelz il declairera par quoy le roy Edouart ſe contentra et aſſeurera, et dont paix perpetuelle ſe pourra plus ſeurement faire entre les dits royaulmes.

Tiercement, il eſpere trouver moyens par les quelz leſtaple des laines Dangleterre ſe fera en France, ſoit ou a Rouen, a Caillaiz, ou ailleurs, a grant prouffit des Francoys et des Angloys, et ſans quil prejudice au roy ne au royaulme de France.

Quartement, le dit Chancellier fait ouverture que les Angloys auroient libertiz a Bourdeaulx, a Bajonne, au prouffit des deux royaulmes de France et Dangleterre, comme les marchans de la Hance ont a Londre, les quelz ont ung aldrement qui eſt du conſeil de la ville avecques les autres aldremens, et a la garde de lune des ports de la ville, la ou il peut entier et ſaillir de la dite ville quant il leur plaira.

Quinctement, il dit quil croit que ſe le roy fait aucunes deſpences en ces matieres que legierement elles pourront eſtre recouvrees au moyen dung proces que Richart Henon, Angloys pourſuit en la court de Parlement, mais que le roy lui veuille donner faveur.

Dit apres le dit Chancellier que les dits choſes deſſus dits pourront ſortir bon effect, mais quelles ne ſoient point revellees, affin quelles ne veingnent en ſuſpecion des ennemiz du roy, ſon maiſtre, et que icellui Chancellier ou autre ſollicite devers le roy ou ſon conſeil les choſes deſſus dits. Car il doubte ſi les choſes eſtoient revellees, que les ennemiz du dit roy Henry ne ſe trouvaſſent plus fors que lui devers le roy, au grant dommaige du roy et de la royne Dangleterre, ſa maiſtreſſe.

2016547

Par Jehan Forteſceue, Chevallier, Chancellier Dangleterre.

The above document is written by a contemporary hand upon a ſingle ſheet of paper without watermark. It appears to be of the year 1470.

It would ſeem that by this time Louis was thoroughly alive to the neceſſity of ſtirring up diſcord among the Engliſh, to prevent them from interfering with his ſchemes. He probably never meant to do more than this, and therefore deſires Clarence and Warwick,[1] with their ladies, to be hoſpitably entertained at their landing place, and invites them to his Court at Angers and Amboiſe. Queen Margaret, upon hearing of their arrival, repaired likewiſe to Amboiſe with the Prince, and we find that Forteſcue accompanied them, and took a forward part in the negotiations with Louis. He laid a memorandum before the French Government, as the foregoing State paper ſhows, inviting the King to join Margaret's adviſers in bringing

[1] Lingard.

about a marriage between the Prince of Wales and the Lady Anne Neville, Warwick's daughter, repreſenting "that by means of ſuch marriage the ſaid Earl of Warwick and his friends would be ſecured, and the ſaid Earl would have the chief management of the kingdom of England, and that with his ſupport, and that of the loyal ſubjects of King Henry, the Queen and Prince would have more ready entrance into their kingdom, and thus would a peace, firm and laſting, be ſecured between the countries." Margaret had now met Warwick, the chief author of all her misfortunes, and the greateſt enemy of her cauſe. Their common intereſt, however, ſoon reconciled them to act together, and Louis encouraged the union. The match ſo much deſired by Forteſcue was agreed to, and "firſt to begin withall," ſays Holinſhed,[1] "for the ſure foundation of their new intreatie, Edward, Prince of Wales, wedded Anne, ſecond daughter to the Earle of Warwick, which ladie came with her mother into France." Thus "the brother of King Edward became brother-in-law of the Lancaſtrian Prince, and the Earl of Warwick was equally allied to both houſes."[2]

The other terms of this reconciliation were theſe:[2] that the Duke of Clarence and the Earl of Warwick ſhould endeavour to reſtore Henry to the throne; and that the Queen ſhould promiſe, with an oath, to leave the government of the kingdom in their hands during the King's life, or the minority of the Prince his ſon, a conceſſion, as we have ſeen, recommended by Forteſcue.

Louis promiſed to furniſh ſome money and troops, and to convey Warwick to England with his fleet.

Sir John at this time muſt have become ſanguine of ſucceſs, for he lays propoſals before the King of France, on matters of detail relating to trade between France and England, propoſing that a market for Engliſh wool ſhould be eſtabliſhed at Rouen or Calais, and that Engliſh merchants at Bourdeaux and Bayonne ſhould have the ſame privileges that the City of London had granted to Flemiſh traders—namely, the right to appoint an alderman, and the keeping of one of the city gates. This alſo is referred to in the State Paper.

The march of events now became rapid. Warwick landed in England unoppoſed by Edward, who had gone to the North to quell a riſing there—proclaimed Henry VI., and had reached Nottingham unoppoſed, and with an increaſing force, when Edward, alarmed by the defection of a part of his army, fled from the kingdom, and croſſed to Holland. Warwick and Clarence entered London in triumph on the 6th of October (1470), releaſed Henry from the Tower, and replaced him on his throne.

There was great joy among the exiles when they heard of this ſudden revolution. Louis ordered public thankſgivings and rejoicings, and Margaret was received in Paris as Queen of England. It ſeems ſtrange that ſhe and the Prince ſhould not have at once joined the

[1] Hol. iii. 295. [2] Rapin, i. 668.

reſtored King. She did not, however, embark at Harfleur until the 24th of March, when Edward, with a ſmall force raiſed in Holland,[1] had already re-entered the kingdom at Ravenſpur. The popular tide had turned, and the treacherous Clarence had gone over to his brother with 12,000 men.

On Eaſter Sunday, the 14th of April, the armies of the two parties met at Barnet, and the Lancaſtrians, after a bloody fight, were entirely defeated, Warwick himſelf was ſlain, his brother alſo, and almoſt all the leaders, and the re-inſtated Henry was taken priſoner, and once more lodged in the Tower.

It was on that ſame Eaſter Sunday that Margaret and the Prince, after nearly three weeks ſpent in the voyage, landed at Weymouth, and Sir John Forteſcue with them. Their diſmay on hearing the overwhelming news was great; but they were cheered by the arrival of the Duke of Somerſet, and Jaſpar Tudor, Earl of Pembroke, who held out hopes that Edward might ſtill be effectually oppoſed, and it was decided to proceed at once to Exeter,[2] through the weſtern counties, where their friends were ſtill conſiderable in numbers.

A more bitter diſappointment to Sir John than that which he was fated to ſuffer on landing in England can hardly be imagined. When he left the French ſhores, the cauſe for which he had ſo long ſuffered and laboured appeared to be ſecured. Henry had been for ſome months reſtored to his throne, his rival was a fugitive from England, and his rival's brother, and Warwick "the king-maker," were in arms for the Red Roſe. But when he reached Weymouth all this was changed. Henry was again a priſoner, Clarence with his army had deſerted to the enemy, a great battle has been fought and loſt, and Warwick was killed.

His heart may well have ſunk within him, and it is not ſurpriſing that his firſt impulſe was to adviſe a return at once to France.[3] It was, however, as we have ſeen, otherwiſe determined. The final overthrow was ſtill to come, and the venerable Chancellor was once more to mingle in a bloody fight. The ſtory may be told in the graphic though quaint words of an old chronicle, preſerved by Leland. After marching unoppoſed through Somerſet and Glouceſterſhire, "Prince Edward and his hoſt came to Tewkeſbury, and pitched his field by Severn."

"In the year of our Lord 1471, and the eleventh year of King Edward, Edward King fought with Prince Edward, Henry the Sixth's ſon, at Tewkeſbury, the 4th of May, and King Edward won the field. Edmund Duke of Somerſet and Sir Hugh Courtenay fled from Prince Edward, and ſore weakened his field, yea and utterly loſt it. There was ſlain Prince Edward, crying on the Duke of Clarence, his brother-in-law, for help. There were ſlain alſo Courtenay Earl of Devonſhire, the Lord John of Somerſet, the Lord Wenlock, Sir Edmund Hampden, Sir Robert Whitingham, Sir William Vaux, Sir Nicholas Hervey, Sir John Delvis, Sir William Fielding, Sir Thomas Fitzhenry, Sir John Lewknor.

[1] Lingard, v. 210. [2] Leland, Coll. ii. 505. [3] Rapin.

"Theſe were firſt pardoned by King Edward, againſt whom, entering a church with his ſword drawn in Tewkeſbury, a prieſt brought the Sacrament againſt him, and would not let him enter until that he had granted his pardon to them that follow:—the Duke of Somerſet, the Lord of St. John's, Sir Humphey Audley" (and twelve more); "all theſe when they might have eſcaped tarried in the church, truſting the King's pardon, from Saturday to Monday in the morning, when they were taken out and beheaded.

"After the field of Tewkeſbury, Queen Margaret, Prince Edward's wife the ſecond daughter of the Earl of Warwick, the Counteſs of Devonſhire, dame Catarine Vaus, were taken; and theſe men of Name were taken and not ſlain, Sir John Forteſcue, Sir John Saint Lowe, Sir Henry Roos, Thomas Ormond, Doctor Mackerel, Edward Fulforde, John Parker, John Baſſet, John Walleys, John Throgmorton."[1]

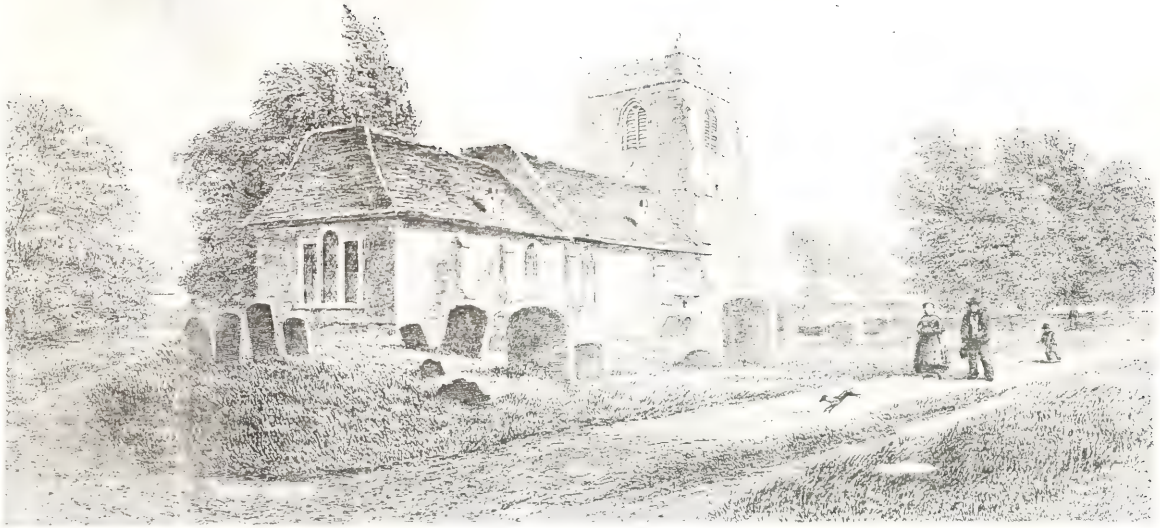
We do not know why Forteſcue was ſpared,—perhaps the conqueror Edward reſpected his age, or his appetite for blood may have been ſatisfied by the number of previous victims more actively engaged in the actual conflict, in which ſo many of Forteſcue's fellow-exiles fell. His unhappy maſter, King Henry, was murdered at night in the Tower on the 21ſt of May, the day before Edward's return to London from Tewkeſbury in triumph, with Margaret a priſoner in his train, who remained a captive for five years, when ſhe was ranſomed by King Louis of France, and died in that country in 1482.

Sir John's impriſonment was not of long continuance. According to a tradition, ſtill current on the ſpot, he was ſoon releaſed, and ordered to remain at Ebrington. He was no longer formidable to Edward after the deaths of Henry and the prince his ſon, nor after theſe events was there any one but the reigning ſovereign to claim the allegiance of Engliſhmen, who had univerſally ſubmitted to the new dynaſty. It is not therefore ſurpriſing either that Edward ſhould be willing to pardon him, or that Forteſcue ſhould feel that he might without any impropriety or inconſiſtency become his "true ligeman." It was not long before he was received into favour, his pardon being granted under the Broad Seal of Edward the Fourth, dated at Weſtminſter the 13th of October, A.D. 1471. This document, which contains a declaration that it is by authority of Parliament, was extant not many years ago, Mr. Incledon, the compiler of "Stemmata Forteſcuana," an MS. vol. belonging to Lord Forteſcue, written in 1795, there ſtating that he had ſeen it.

Forteſcue was upon this forthwith re-appointed a Privy Councillor, this fact being mentioned in his tract called "A Declaration on Writings from Scotland."[2] Edward had ſet him free, pardoned, and reſtored him to the Council, without any unuſual conditions. But before he gives him back his lands and manors, he requires the old lawyer to argue for his hereditary right to the crown, as he had before done againſt it,

[1] Leland's Collectanea, by Hearne, vol. ii. p. 505.

[2] See *post*.



and in behalf of that of King Henry. Lord Campbell, in his "Lives of the Chief Juſtices," thus accounts for the impoſition of theſe diſtateful terms:—

"One good deed Chief Juſtice Billing did which ſhould be recorded of him, in adviſing Edward the Fourth to grant a pardon to an old Lancaſtrian, Sir John Forteſcue. But for the purpoſe of reducing this illuſtrious judge to the reproach of inconſiſtency, which he knew made his own name a bye-word, he impoſed a condition that Forteſcue ſhould publiſh a new treatiſe to refute that which he had before compoſed proving the right of the Houſe of Lancaſter to the throne."

In his "Latine Booke," which he was now to anſwer, the "De Naturâ Legis Naturæ," he had deſcanted upon the reaſons why a woman ſhould not reign as a ſupreme ruler, drawing largely, as was the cuſtom of his time, upon Holy Scripture to prove what they had in fact never touched upon or conſidered, and what the author of "De Laudibus" muſt have well known to be a queſtion of expediency only, and not of abſtract right or wrong.

He had got together paſſages from the Bible, and the Fathers, to ſhow that the man was ordained to be above the woman, and that therefore no woman ought to reign over man; but in the "Declaration" he ingeniouſly diſcovers his error, and ſees that ſuch paſſages as that in Geneſis, "Thou ſhalt be under the power of man, and he ſhall be thy lord," ought to be differently explained—"which words," he ſays, "ſpoken to that woman, was, as I thoo wrote, ſpoken to all kind of woman, as the words then ſpoken by God to the firſt man was ſaid to all mankind. This matter ye now deſire that I will ſo declare as the King our Sovereign Lord be not harmed in them in his titles of England or of France—ſo, as to the firſt point, I hope to find not difficult, for our Lord ſaid not in his foreſaid judgment that a woman ſhould be under the power and lordſhip of all men, or of many men; but he ſaid indifferently or indeterminably that ſhe ſhould be under the power and lordſhip of man, which is true if ſhe be under the power and lordſhip of any man; and that every woman is under the power and lordſhip of ſome one man (which is all that ſhe is cited unto by the foreſaid judgment in Geneſis) may not be denied, for every woman is under the power and lordſhip of the Pope, which is a man, and the Vicar of Chriſt, God and man. Wherefore the foreſaid text of Geneſis, or anything by me deduced thereof, may not prove that a woman may not reign in a kingdom of which the king hath no ſovereignty or temporality, ſithen ſhe abideth always ſubject to the Pope; and by the ſame reaſon it may not hurte the King in his titles to his foreſaid two realms."

He thus ſhortly and eaſily diſpoſes of, without actually contradicting, his own former long and laboured treatiſe "on the other ſide," and accepts the claim of Edward as deſcended, though in the female line, from Lionel, Duke of Clarence, Edward the Third's ſecond ſon, as better than that of the Plantagenet Kings, who deſcended in the male line from John of Ghent his third ſon.

There remained to be got rid of a queſtion of fact. Forteſcue, in his "Defence of the Houſe of Lancaſter," had aſſerted that Philippa, daughter to Lionel, Duke of Clarence,[1] through whom the claim of the Houſe of York aroſe, had never been acknowledged by her father, he now explains that he made that ſtatement in ignorance of certain records which, on his return to England, had been for the firſt time ſhowed him; "by which records it clearly appeareth that the foreſaid Phillipe was daughter, and heir to the foreſaid Duke of Clarence, and to Elizabeth his Wife, becauſe that ſhe and the Earl of March, her huſband, had livery in the Chancery of all the lands of the Duke."

It may well be doubted whether Forteſcue really had any ſtrong opinion on the queſtion of the right of females to reign. He had argued well and ingeniouſly, according to the notions of his time, againſt that right, as a lawyer for his client, becauſe he did all that he could to ſupport Henry on the throne, he being, as he ſays, "no Judge, but a partial man to him, for whoſe favour he made the arguments," that is, one ſincerely deſiring to ſupport Henry's rule; and afterwards, when he was writing as a ſtill more "partial man" on the oppoſite ſide, that is to ſay, fulfilling the condition of his reſtoration to his eſtates, he eſcapes from his former arguments by a device which he muſt have laughed at in ſecret as childiſh and almoſt comical.

No one who has read his outſpoken language in "De Laudibus," when he repeats again and again the maxim that Kings of England muſt not make the laws, but muſt govern according to them, and that laws to be binding on the people muſt have the people's conſent, can doubt that he was ready to accept heartily, ſo far as right went, either Henry, or Edward, or any ſovereign, when once the conſent of the nation had been deliberately and decidedly expreſſed in his favour.

He ſays, "The King is appointed to protect his ſubjects in their lives, properties, and laws, for this very end and purpoſe he has the delegation of power from the people, and he has no juſt claim to any power but this."

Again, "It is plain that if Kingly power did not originally proceed from the people, the King could have no ſuch power rightfully at all."

Nor did Forteſcue change his opinion or his language reſpecting the kind of kingly government which was the beſt for a people to live under. He writes as ſtrongly upon it under Edward the Fourth as he had done in the time of his predeceſſor. For example, he ſays in his lateſt work, that "the Dominium Politicium et Regale began by the Deſire and Inſtitution of the people of the Prince," and adds, "Bleſſed be God, this Land is ruled under a better law, and therefore the people thereof be not in penury, nor thereby hurt in their perſons, but they be wealthy, and have all things neceſſary to the ſuſtenance of Nature. Lo, this is the fruit of Jus Politicum et Regale under which we live.[2]"

[1] Lingard, v. 217. [2] De Dominio, pp. 14-24.

However ſuperficial may have been his anſwer to his old arguments, it was a complete retractation of them, and ſatisfied the King's adviſers, ſo that he had now only to preſent his petition for the reverſal of his attainder, which was as follows:[1]

To the Kyng oure Soverayn Lord: In the mooſt humble wyſe ſheweth unto youre noble grace, your humble ſubget and true Liegeman John Forteſcue Knyght, which is, and ever ſhal be duryng his lyf, youre true and feithful Subget and Liegeman, Soverayn Lord by the grace of God; howe be it the ſame John is not of power, ne havoir to do youre Hignes ſo good ſervice as his hert and wille wold do, forſomoche as in youre Parlement holden at Weſtminſter the fourth day of November the firſt yere of youre mooſt noble reigne, it ordeyned, demed, and declared, by auctorite of the ſame Parlement, that the ſaid John by the name of John Forteſcue Knyght, amonge other perſons ſhuld ſtond and be convicted, and attaynted of high treaſon, and forfeit to you Soverayn Lord and youre heires, all the Caſtelles, Maners, Lordſhippes, Londes, Tenementes, Rentes, Services, Fees, Advouſons, Hereditaments, and Poſſeſſions, with their appurtenances, which he had of aſtare of enheritaunce, or any other to his uſe had, the thirtieth day of December next afore the firſt yere of youre mooſt noble reign, or into which he, or eny other perſone or perſones, feoffeez to the uſe or behofe of the ſame John had the ſame thirtieth daie lawfull cauſe of entre within Englond, Irelond, Wales, or Caleis, or the Marches therof; as more at large is conteyned within the ſame Acte or Actes.

Pleaſe it youre Highnes, foraſmuch as youre ſaid Suppliaunt is as repentaunt, and ſorrowfull as eny creature may be of all that which he hath doon or committed to the diſpleaſure of youre Highnes contrarie to his duetie, and liegeaunce, and is, and perſeverantly ſhal be to you Soverayn Lord, true, feithfull, and humble ſubget and Liegeman, in wille, word, and dede; of youre mooſt habundaunt grace by th' advis, and aſſent of the Lordes Spirituell and Temporell, and the Comens, in this youre preſent Parlement aſſembled, and by auctorite of the ſame to enacte, ordeyne, and ſtabliſh, that the ſeide Acte, and all Actes of atteyndre, or forfeiture made ayenſt the ſame John and his feoffees to the uſe of the ſame John, in youre ſaid Parlement holden at Weſtminſter the ſaid fourth day of Novembre, as ayenſt theym, and every of theym, and eny of theym, by what name or names the ſame John be named, or called in the ſame Acte or Actes of, in, or by reaſon of the premiſſes, be utterly voide, and of noone effecte ne force; and that the ſame John nor his heires in no wiſe be prejudiced nor hurt by the ſame Acte or Actes made ayenſt the ſame John, and that by the ſame auctorite youre ſeid Suppliaunt and his heires have, poſſede, joy, and enherit all maner of Poſſeſſions, and heriditaments in like maner and fourme, and as ample and large wiſe, as the ſame John ſhuld have doon yf the ſame Acte or Actes never had be made ayenſt the ſame John, and that the ſeid John and his heires, have, hold, joy, and enherit all Caſtelles, Maners, Lordſhips, Londes, Tenementez, Rents, Services, Fees, Advouſons, and all other Hereditamentez and Poſſeſſions, with their appurtenauncez which come, or ought to have comyn to youre hands by reaſon of the ſame Acte or Actes made ayenſt the ſame John, and feoffez to his uſe, and into theym, and every of theym, to entre, and theym to have, joy and poſſede in like maner, fourme, and condition, as the ſame John ſhuld have had or doon, yf the ſame Acte or Actes never

[1] Rolls of Parliament, vi. p. 69.

had been made ayenſt the ſeid John and his ſaid feoffez to his uſe, without ſuying them, or eny of theym out of youre handes by petition lyvere, or otherwiſe by the courſe of your lawes.

And that all Lettres patentes made by your Highnes to the ſeid John, or to eny perſone or perſones of eny of the premiſſes be voide, and of noon effecte; Saving to every perſone ſuch title right and lawful entre as they or any of theym, had at the tyme of the ſaid Acte or Actes made ayenſt the ſame John or any tyme ſith, other than by meane and virtue of youre Lettres patentes made ſith the fourth day of March the firſt yeare of youre reigne, or eny tyme ſith. And that noo perſone or perſones be empeched nor hurt of, or for, takyng any iſſues or profittes, nor for eny offenſes doon in, or of eny of the premiſſez, afore the third day of the moneth of Aprill the thirteenth yere of youre reigne, and ſith the ſaid fourth day of March by the ſeid John or eny feoffez to his uſe by way of action, or otherwiſe.

Provided alway that noo perſone nor perſones atteynted, nor their heires, take, have, or enjoy, any avauntage by this preſent Acte, but oonly the ſaid John and his heires in the premiſſes, and alſo the feoffez to the uſe of the ſeid John oonly, for of and in the premiſſes which the ſame feoffez had to the uſe of the ſeid John the ſeid thirtieth day or any tyme ſith: And youre ſaid Suppliant ſhull pray to God for the preſervation of youre mooſt Roiall Aſtate.

Conſideryng Soverayn Lord, that youre ſeid Suppliant lovith ſo, and tenderith the good of youre mooſt noble Aſtate, that he late by large and clere writyng delyvered unto youre Highnes, hath ſo declared all the maters which were writen in Scotland and elleſwhere, ayen youre right or title, wh ch writynges have in eny wiſe comen unto his knowelege, or that he at eny tyme hath be pryve unto theym; and alſo hath ſo clerely diſproved all the arguments that have be made ayen the ſame right and title, that nowe there remayneth no colour, or matere of argument to the hurt or infamye of the ſame right or title, by reaſon of any ſuch writyng, but the ſame right and title ſtonden nowe the more clere and open by that any ſuch writyngs have be made ayen hem.

On the 6th of October, in the year 1473, this petition was laid before Parliament by the King's command.

The following record occurs in the Rolls of Parliament:[1]—

Pro Johanne Fortescu.

Memorand: quod dicto ſexto die Octobris Anno Tertiodecimo prædicto, quædam Petitio exhibita fuit prefato Domino Regi in preſenti Parliamento per Johannem Forteſcue Militem, in hæc verba.

(Here follows the Petition, as before).

Qua quidem Petitione in Parliamento predicto lecta, audita, et plenius intellecta, de adviſamento, et aſſenſu, Dominorum Spiritualium et Temporalium, et Communitatis Regni Angliæ, in dicto Parliamento exiſtentium . . . et auctoritate ejuſdem, reſpondebatur idem in forma ſequenti.

Soit fait comme il eſt deſiré.

And the final ſtage in the reverſal of the attainder was completed upon the ſigning of

[1] From Rolls of Parliament, vol. vi. p. 69.

the Exemplification or Inſpeximus on the 14th of February, 1475. The document runs thus :—

Edwardus dei gratia Rex Angliæ, Franciæ, et Dominus Hiberniæ, Omnibus ad quos preſentes litteræ pervenerint, ſalutem. Inſpeximus quandam petitionem in Parliamento noſtro apud Weſtmonaſterium ſexto die Octobris, anno regni noſtri duodecimo ſummonito et tento, et per diverſas prorogaciones uſque ad et in ſextum diem Octobris, anno regni noſtri tertiodecimo, per Johannem Forteſcu militem exhibitam in hæc verba : To the kyng oure ſovreyne lord, In the mooſt humble wiſe ſheweth unto your moſt noble grace, &c. &c. &c.

(The whole Petition as before is here recited).

Inſpeximus etiam quendam aſſenſum eidem peticioni per communitates regni noſtri Angliæ in dicto parliamento exiſtentes, ſecundum eſt in dicta peticione ſpecificatum in hæc verba, *A ceſt bille les eſtatz ſont eſſentuz*. Inſpeximus inſuper quandam reſponſionem idem peticioni per nos de adviſa nento et aſſenſu dominorum ſpiritualium et temporalium in dicto parliamento ſimiliter exiſtentium, ac communitatis prædictæ, necnon auctoritate ejuſdem Parliamenti factam et in dorſo ejuſdem petitionis inſertam in hæc verba, *ſoit fait come il eſt deſire*. Nos autem tenores peticionis, aſſenſus, et reſponſionis prædictæ, ad requiſitionem præfati Johannis duximus exemplificandos per preſentes. In cujus rei teſtimonium has litteras noſtras fieri fecimus patentes. Teſte me ipſo apud Weſtm. quarto decimo die Februarii, Anno regni noſtri quarto decimo.

Gunthorp.

Ex^d. per { Johannem Gunthorp / Thomam Ivo } Certificatores.[1]

At the ſame time Petitions almoſt in the ſame words with the foregoing were preſented from ſeveral of the Lancaſtrians who had been Forteſcue's companions in exile, and in war; namely, Thomas Ormond, Sir Henry Roos, Doctor Mackerell, and Doctor, afterwards Cardinal, Morton. The career of the laſt was, in many particulars, and up to a certain point, like his own. Having riſen to the higheſt place as an advocate in the Eccleſiaſtical Courts under Henry the Sixth, he was ſworn of the Privy Council, and preſented with valuable livings. Like Forteſcue, he adhered with unſhaken fidelity to the Lancaſtrian cauſe ſo long as that cauſe exiſted. They were together at the Battle of Towton, and in exile in France; and although Morton is not mentioned as being preſent at the defeat at Tewkeſbury, he returned to England about that time, and, being pardoned by Edward, was reſtored, like Sir John, to the Privy Council. He was, however, fifteen or twenty years his junior, and ſtill young enough to be employed. We conſequently find him Maſter of the Rolls in 1473, and Biſhop of Ely, and finally, under Henry the Seventh,

[1] Campbell, "Lives of the Chancellors," vol. i.

Archbiſhop of Canterbury, Cardinal, and Chancellor.[1] So cloſely allied in theſe times, as in thoſe before them, were the profeſſions of the Law and of the Church; ſo averſe were men from appearing to put aſunder what, as it ſeemed to them, God had joined together, by drawing a diſtinction between the laws of God and the laws of man, until the Reformation, recognizing the fact that an enlightened Chriſtianity permits wide differences of opinion as to what the former code conſiſts of, made it impoſſible in a free State to continue in practice what in theory it is ſo delightful to contemplate, viz. a Church and a State not united, but eſſentially one.

This ſame feeling appears in the ſtrong theological tone, and the frequent and arbitrary quotations from Holy Scripture and from the Fathers, as from legal authorities, which are ſo prevalent in Forteſcue's works, as well as in thoſe of his contemporaries who wrote upon law.

After Sir John's reſtoration to his eſtates he does not appear to have taken any part in public affairs.

The lateſt notice of him which I have ſeen is in the Records of the Exchequer, in the 15th year of this reign, namely in February, 1476, when he delivered into the Exchequer an Aſſize that had been taken before him when Chief Juſtice.[2]

His treatiſe, "On the Difference between Abſolute and Limited Monarchy," was written during this period.

He lived quietly for ſome years at Ebrington, a manor houſe, part of which ſtill remains included in the preſent leſs ancient building, cloſe to the church and pretty village of the ſame name, looking over a ſmiling country of gentle hills and ſlopes, on the borders of Glouceſterſhire and Worceſterſhire, within the former county.

"Here," ſays Lord Campbell, "he quietly ſpent the remainder of his days, and here he died, leaving a great and venerable name to his poſterity and his country." According to the local tradition, which the preſent occupant of the manor houſe repeated to me, he lived to be ninety years old.

He was buried in the pariſh church, near the communion table on the north ſide, where his tomb ſtill remains. The following is copied from notes taken by the author on the ſpot on the 8th of Auguſt, 1863. The church is not in itſelf remarkable, nor, except where a good Norman arch remains, near the tower, inſide, can it be as old as the Chancellor's time. His monument is againſt the north wall inſide the communion rails. It conſiſts, firſt, of a large mural tablet, put up in 1677 by Colonel Robert Forteſcue, the then owner of the family property, ſurmounted by the Forteſcue arms, bearing the following inſcription:—

[1] Campbell, i. p. 417.

[2] Kal. Exchcq. iii. 8. Quoted in Foſs, Lives of the Judges, vol. iv. Article "Forteſcue."

In
Fælicem et immortalem memoriam
Clariſſimi Viri Domini
JOHANNIS FORTESCUTI
Militis, Grandævi, Angliæ Judicis Primarii,
Et proceſſu temporis ſub Henr. VI. Rege et
Edwardo Principe ſummi Cancellarii,
Regis Conſiliarii prudentiſſimi,
Legum Angliæ peritiſſimi
Necnon earundem
Hyperaſpiſtis
Fortiſſimi
Qui
Corporis Exuvias Lætam Reſurrectionem expectantes
Hic depoſuit.

Marmoreum huc monumentum
Poſitum eſt A.D.
M.DCLXXVII.
Voto et Expenſis Roberti Forteſcuti
Armigeri, ejuſdem Familiæ Hæredis nuper defuncti.

Angligenas intra Cancellos Juris et Æqui
Qui tenuit, Cineres jam tenet Urna Viri.
Lex viva ille fuit Patriæ, Lux ſplendida Legis,
Forte bonis ſcutum, ſontibus et ſcutica.
Clarus erat titulis, clarus Majoribus, Arte
Clarus, virtute aſt clarior emicuit.
Jam micat in tenebris, veluti Carbunculus Orbi,
Nam Virtus radios non dare tanta nequit.
Vivit adhuc Forteſcutus laudatus in Ævum;
Vivit et in Legum laudibus ille ſuis.

In Engliſh thus:[1]—

To
The happy and immortal memory
Of that moſt famous man
Sir John Fortescue,
An ancient Knight, chief Juſtice of England,
And in proceſs of time, under Henry VI.
And Prince Edward, High Chancellor.
Of the King, the moſt prudent councellor,
In the laws of England profoundly learned,
And of theſe laws alſo
A Champion
Invincible;
Whoſe earthly remains, in expectation of
A joyful Reſurrection,
Are here depoſited;

This marble monument
Is erected
M.DCLXXVII.
By the direction and at the expence of
Robert Forteſcue, Eſq.
The direct heir of this family, lately deceaſed.

Of him, who juſtice could the beſt explain,
This little urn does all that's left contain.
His country's living law, that law's great light,
The ſcourge of wrong, and the defence of right;
His birth diſtinguiſhed, merit gave him ſtate,
Learning, applauſe, but virtue made him great.
Through darkneſs now a carbuncle he ſhines,
Nor wiſdom's rays the gloomy cave confines;
To lateſt times ſhall Forteſcue be known,
And in the law's juſt praiſe be read his own.

[1] The Engliſh is from the "Biographia Britannica."

Below the tablet on a ſmall ſlab are theſe words:—

"To perpetuate the memory of that learned and excellent man, Chancellor Forteſcue, this monument was repaired by his deſcendant, Matthew Lord Forteſcue, in the year 1765."

And on a braſs plate, ſtill lower on the wall:—

"Reſtored by the Right Honble. Hugh 3rd Earl Forteſcue, A.D. 1861."

Below this is the tomb itſelf, ſurmounted by a full-length figure of the Chancellor, in red robes and cap, very brilliant in their new paint, lying on his back, with the hands joined as in prayer. On the three ſides of the tomb the family arms are repeated ſeveral times on ſhields, alſo coloured newly. The tomb and figure are ſuppoſed to have been erected ſoon after the Chancellor's death. The print annexed, from Mr. Maunde's drawing, is a perfectly correct repreſentation of the whole.

The antiquary, Thomas Hearne, in his unpubliſhed diary, corrects a miſtake made by ſome authors as to the age of the tomb. He writes, November 29th, 1733:—

"Sir Robert Atkyns, in his deſcription of Glouceſterſhire, hath made a groſs miſtake (in which he hath been followed by Biſhop Gibſon, the author of the 'Magna Britannia,' &c. &c.) in aſſerting that my Lord Chancellor Forteſcue's monument, with his effigies, in Ebburton Church, was ſet up by his heir in 1677. For tho' it be true that in the year 1677 a monument with an inſcription was fixed in the wall on the north ſide the chancel, yet that with his effigies (which is a raiſed monument of free-ſtone, finely painted in colours, ſtanding on the north ſide the chancel, within the communion rails) was erected, as any eye may witneſs by the form of the workmanſhip, immediately after his death."

The writer of Forteſcue's Life, in the "Biographia Britannica," in like manner ſays that the old tomb and figure were, judging by their appearance of antiquity, and by the ſtyle of their workmanſhip, probably executed ſoon after his interment.

Sir John's only ſon, Martin, had died in 1472, on the 12th of November,[1] leaving, as we find by a Poſt-mortem Inquiſition held at Torrington on the 12th of May, 12th of Edward IV, his ſon and heir John Forteſcue, aged 12 years, and a ſecond ſon William. Through this elder ſon the eſtate of Ebrington has come down in direct male ſucceſſion to the preſent Earl Forteſcue—who, I truſt, will long enjoy it, and be allowed to hand it on to a lengthened line of male poſterity. Lord Forteſcue's eſtates of Wear Giffard, and Filleigh, or Caſtlehill, have in like manner been inherited through the Chancellor's grandſon in right of his mother, the heireſs of Denzile. His younger grandſon, William, ſucceeded to the Buckland-Filleigh property, and it continued in his male deſcendants until the year 1776, when, upon the death of John Forteſcue, who had inherited it from the Right

[1] Inq. P. Mortem, 12 Edward IV. See Appendix.

Honourable William Forteſcue, the eſtate paſſed in the female line to Mr. Richard Inglett, and was ſold by his ſon Colonel John Inglett Forteſcue,[1] who died in the year 1840.

The preſent Earl Forteſcue informs me that neither he nor any member of his family holds any lands which at any time were the Chancellor's, excepting Ebrington. Philip's Norton in Somerſetſhire,[2] which came to him by his wife Iſabella Jamys, remained with his deſcendants until ſold by Hugh Forteſcue, Earl Clinton, about 1725, to a Mr. Edward Trip.

The male deſcendants of the Chancellor, of the Buckland-Filleigh houſe, although extinct in the elder line, have been continued through Sir Faithful Forteſcue of Buckland-Filleigh, who went to Ireland in the reign of James the Firſt with his uncle, Arthur Lord Chicheſter the Lord Deputy, and who is the anceſtor of the Earl of Clermont, and of the preſent Lord Clermont, who writes this memoir.

Of Sir John Forteſcue's character there appears to have been, from his own times to the preſent, but one opinion. His judgments are ſtill referred to with veneration, and the only two of his works which have been hitherto publiſhed are quoted by nearly all who have written on the early Engliſh conſtitution as authorities of the greateſt weight, both as to facts and doctrines.

A writer born about 20 years after Forteſcue's death—Biſhop Bale, in his "Scriptorum Illuſtrium Majoris Britanniæ Summarium," is among the earlieſt who have left on record an opinion of his merits:—

"Foskevve Cancellarius.

"Foſkevue alias Forteſkevue ut Recordus habet,[3] juris peritiſſimus, primarius judex, et Angliæ Regni Cancellarius ſummus, inter eruditos in noſtro catalogo locum et doctis laboribus honorificum petit. Quem ſi illi negaremus ingrati merito appellaremur.

"Excoluit tum juvenis, tum etiam ſenex, virtutem, literaſque politas ut qui maxime ſemper amavit.

"Inter forenſes Londini clariſſimus juris civilis interpres admittebatur; ac nobiliores in ſchola juvenes, peculiares a regibus conditas leges perdocuit. Inde a gradu ad gradum aſcendit donec eſſet ſupremus Angliæ Cancellarius, quod munus in reipublicæ adminiſtratione et auctoritate, et dignitate, in eo regno longe maximum eſt.

"In quo officio tam candidè ſe geſſit ut juſticiæ ac prudentiæ laus illi tribueretur ſumma.

---

[1] Buckland-Filleigh Pedigree, Inſcription in Buckland-Filleigh Church.

[2] Lord Forteſcue's Letter of November 6, 1865.

[3] Recordus, i.e. Robert Record, a writer who died in the laſt year of Queen Mary, 1558. See Biog. Britt. Article "Forteſcue."

Quidquid dignitate valebat, aut gratia apud Principem, id juvandæ reipublicæ totum impendiſſe fertur.

"In hoc zelo pietatis ſcripſit ſub Henrico Sexto, Differentiam inter leges provinciales ac civiles, vel,

'De Diſcrimine Legum,' Lib i. 'Seviente dudum in regno Angliæ.'
'De Laudibus Legum,' Lib i.
'De Politica Adminiſtratione,' Lib i.
'De Vigore Legis Naturalis,' Lib i., aliaque nonulla.

"Tandem fuit exul ab Angliâ. Et colligo illum claruiſſe circum tempus civilis belli quo Edwardiani cum Henricianis Anno Domini 1460, de imperii ſummâ pertinaciſſimè certabant. Exilii vero cauſas non legi."

Sir Edward Coke,[1] the celebrated Chief Juſtice of the reigns of Elizabeth and James, mentions his "profound knowledge of the law, and his excellence as an Antiquary," that is to ſay, as an Hiſtorian, ſtyling him "that moſt reverend and honorable Judge," and when commending Trial by Jury, he ſays:[2] "For the excellency of this kind of trial, and why it is only appropriated to the common laws of England, read Juſtice Forteſcue, chapters 25, 26, 28, 29, 30, 31, 32, &c. &c., of his book 'De Laudibus Legum Angliæ,' which being worthy to be written in letters of gold for the weight and worthineſs thereof, I will not abridge any part of the ſame but refer the learned reader to the fountain itſelf;" and in another place[3] he relates with approbation a caſe in the 34th of Hen. VI. when the Judges, with Forteſcue at their head and ſpeaking for them, give an opinion againſt the power of the King to make Sheriff of Lincolnſhire a perſon who had not been "choſen and preſented unto his Highnes, after the effect of the Statute in ſuch behalf made."

Here is the opinion of Coke upon Sir John's conduct in retracting his Defence of Henry VI.[4]

"To the Reader—

"Fortescue De Laudibus Legum Angliæ; this book was written in the reign of King Henry VI, in commendation of the Laws of England, containing withal much excellent matter worthy the reading. He wrote alſo a book in defence of the title of King Hen. VI. his ſovereign Lord and Maſter, to the crown of England; but after, out of truth and conſcience, retracted the ſame, both which I have. Wherein he derived ſingular commendation, in that he was not amongſt the number of thoſe 'qui ſuos amaſſent errores,'

[1] Sir E. Coke, 6th Part of Reports, 4to., London, 1777.
[2] Sir E. Coke, 8th Part of Reports, 1777, f. xiv.
[3] Coke, 2nd Part of Inſtitutes of the Laws of England, 4to., London, 1642, f. 559.
[4] Tenth Part of Reports of Sir E. Coke, 4to., London, 1777, folio xvi.

but yielded to truth when he found it. This Sir John Forteſcue was Lord Chief Juſtice of England, and afterwards Lord Chancellor of England, and his poſterity remain in great and good account to this day."

An anonymous admirer has written, in a hand bearing marks of being almoſt as old as the volume which contains them, the following lines:—

"Legis et noſtræ tibi forte ſcutum
Sive rem ſpectes, ſcriemve ſcripti
Sive Scriptoris placeat notare
Nobile Nomen."

Theſe are on the flyleaf of a copy of an edition of "De Laudibus," publiſhed in the year 1599, now in my poſſeſſion.

In the ſame ſenſe Sir Walter Raleigh ſtyles him "that notable bulwark of our laws."[1]

To come down to our own time, I find the character of Sir John as a Judge, a Statesman, and a Writer, ſo fully and ſo favourably drawn by the late Lord Campbell, he himſelf, like Forteſcue, an authority of high literary as well as legal reputation, that I ſhall without apology, inſert here, in concluſion, an extract from the intereſting memoir.[2]

"It is delightful, amidſt intriguing Churchmen and warlike Barons who held the Great Seal in this age, to preſent to the reader a lawyer not only of deep profeſſional learning, but cultivated by the ſtudy of claſſical antiquity; and not only of brilliant talents, but the ardent and enlightened lover of liberty, to whoſe explanations and praiſes of our free conſtitution, we are in no ſmall degree indebted for the reſiſtance to oppreſſive rule, which has diſtinguiſhed the people of England.

"As a Common-law Judge, Forteſcue is highly extolled by Lord Coke, and he ſeems to have been one of the moſt learned and upright men who ever ſat in the Court of King's Bench.

"He laid the foundation of parliamentary privilege to which our liberties are mainly to be aſcribed. He had the ſagacity to ſee, that if queſtions concerning the privileges of Parliament were to be determined by the Common-law Judges appointed and removable by the Crown, theſe privileges muſt ſoon be extinguiſhed, and pure deſpotiſm muſt be eſtabliſhed. He perceived that the Houſes of Parliament alone were competent to decide upon their own privileges, and that this power muſt be conceded to them, even in analogy to the practice of the Court of Chancery, and other inferior tribunals. Accordingly, in Thorpe's caſe, he expreſſed an opinion which, from the end of the reign of King Henry the Sixth till the

[1] Raleigh, Hiſtory of the World, 1614. London. Pt. i. Book i. chap. iv. ſec. 16. p. 247 (ſee Biog. Britt. p. 1999).

[2] Campbell, Lives of the Chancellors, vol. i. pp. 371, 376, et ſeq.

commencement of the reign of Queen Victoria, was received with profound deference and veneration.

"Thorpe, a Baron of the Exchequer, and Speaker of the Houſe of Commons, being a Lancaſtrian, had ſeized ſome harneſs and military accoutrements which belonged to the Duke of York, who brought an action of treſpaſs againſt him in the Court of Exchequer to recover their value. The Plaintiff had a verdict, with large damages, for which the Defendant, during a receſs of Parliament, was arreſted and impriſoned in the Fleet. When Parliament re-aſſembled, the Commons were without a Speaker, and the queſtion aroſe whether Thorpe, as a Member of the Lower Houſe and Speaker, was not now entitled to be diſcharged?

"The Commons had a conference on the ſubject with the Lords, who called in the Judges, and aſked their opinion.

"The ſaid Lords ſpiritual and temporal, not intending to impeach or hurt the liberties and privileges of them that were coming for the commerce of this land to this preſent parliament, but legally after the courſe of law to adminiſter juſtice, and have knowledge what the law will weigh in that behalf, opened and declared to the Juſtices the premiſes, and aſked of them whether the ſaid Thomas Thorpe ought to be delivered from priſon by, for, and in virtue of the privilege of parliament or no? 'To the whole queſtion,' ſays the report, 'the Chief Juſtice Forteſcue, in the name of all the Juſtices, after ſad communication and mature deliberation had amongſt them, anſwered and ſaid: that they ought not to anſwer that queſtion; for it hath not been uſed aforetime that the Juſtices ſhould in any wiſe determine the privilege of this high court of parliament; for it is ſo high and ſo mighty in its nature, that it may make law; and that that is law it may make no law; and the determination and knowledge of that privilege belongeth to the Lords of the parliament, and not to the Juſtices.'[1]

"In conſequence of this deciſion, the two Houſes of Parliament were for many ages allowed to be the excluſive judges of their own privileges; liberty of ſpeech and freedom of inquiry were vindicated by them; the prerogatives of the Crown were reſtrained and defined; and England was ſaved from ſharing the fate of the monarchies on the Continent of Europe, in which popular aſſemblies were cruſhed by the unreſiſted encroachments of the executive government.

"What acquaintance Forteſcue had with equity we have no means of knowing; but it is clear that he was not a mere technical lawyer, and that he was familiar with the general principles of juriſprudence.

"As a writer his ſtyle is not inelegant, though not free from the barbariſm of the ſchools; and he diſplays ſentiments on liberty and good government which are very remarkable, conſidering the fierce and lawleſs period when he flouriſhed.

[1] Thorpe's caſe, 31 Hen. VI. A.D. 1452. 13 Rep. 63. 1 Hatſell 29. Lord Campbell's Speeches, 225.

" His principal treatiſe has been celebrated not only by lawyers, but by ſuch writers as Sir Walter Raleigh, and not only by Engliſhmen, but by foreign nations.[1]

" Notwithſtanding his tardy ſubmiſſion to the Houſe of York, he is to be praiſed for his conſiſtency as a politician. Unlike the Earl of Warwick and others, who were conſtantly changing ſides according to intereſt or caprice, he ſteadily adhered to the Houſe of Lancaſter until it had no true repreſentative, and the national will had been ſtrongly expreſſed in favour of the legitimate heir. We muſt indeed regret the tyranny of Edward, who would not generouſly pardon him on account of his fidelity to his former maſter; but his compliance with the arbitrary condition impoſed upon him ſhould be treated with lenity by thoſe who have never been expoſed to ſuch perils."

[1] Chancellor Kent's Cauſes.

APPENDIX A.

Patent Rolls, 21 *Hen. VI., Pt.* 2, *No.* 34 (12 *February*, 1443).

Pro JOHANNE FORTESCUE et aliis de Confirmacione.

OMNIBUS ad quos etc. ſalutem. Inſpeximus quandam cartam indentatam dilectorum nobis in Chriſto Ricardi nuper Prioris domus loci dct de Henton ordinis Cartuſienſium et ejuſdem loci conventus factam in hec verba: Sciant preſentes et futuri quod nos Ricardus Prior domus loci dct. de Henton ordinis Cartuſienſium et ejuſdem loci conventus dedimus conceſſimus et hac preſenti carta noſtra indentata confirmavimus Johanni Forteſcu et Iſabelle uxori ejus ac Margerie que fuit uxor Johannis Jamys matri predicte Iſabelle totum illud meſſuagium in villa de Philippes Norton in quo predicta Margeria modo inhabitat cum curtliagio et gardino eidem meſuagio adjacentibus prout eadem curtilagio et gardinum muris lapideis includuntur, necnon totum illud meſſuagium cum gardino et crofto eidem meſſuagio adjacentibus ſcituatum ad finem auſtralem ville predicte que Johannes Boucher jam ad voluntatem noſtram occupat ac eciam totum croftum noſtrum vocatum Bennettis-crofte et quatuor acris terre in campo auſtrali et quatuor acras terre in campo boriali predicte ville prout eidem octo acre terre metis et bundis de novo fixis limitantur cum omnibus portis aſiamentis et communi paſture in campis et paſturis noſtris ſicut tenentes meſſuagium predictorum ante hec tempora ad voluntatem noſtram vel predeceſſorum noſtrorum melius et liberius habuerunt et occupaverunt, ac cum omnibus aliis pertinentiis ſuis, habendum et tenendum omnia predicta meſſuagia curtilagia gardina crofta et terram una cum portis viis aſiamentis communi paſture et omnibus aliis pertinentiis predictis prefatis Johanni Forteſcu et Iſabelle uxori ſue ac prefate Margerie et heredibus maſculis de corporibus predictorum Johannis Forteſcu et Iſabelle legitime exeuntibus imperpetuum. Reddendo inde annuatim nobis et ſucceſſoribus noſtris tres decem ſolidos et quatuor denarios ad feſta paſche, Nativitatis ſcī Johannis Baptiſte, ſcī Michaelis Archangeli et Nativitatis Domini per equales porciones ſolvendos pro omni ſervicio, exactione et demanda, et ſi contingat eoſdem Johannem Forteſcu et Iſabellam obire ſine herede maſculo de corporibus ſuis exeunte legitime omnia predicta meſuagia curtilagia gardina crofta et terra cum portis viis aſiamentis communi paſture et omnibus aliis pertinentiis predictis poſt mortem Margerie ad nos et ſucceſſores noſtros integre revertantur. In cujus rei teſtimonium tam nos ſigillum noſtrum commune quam predicti Johannes Forteſcu, Iſabella et Margeria, ſigilla ſua partibus hujus carte indentate alternatim appoſuimus. Hiis teſtibus Johanne Longe clerico, Rectore de Norton, predicta, Johanne Swyfte, Patricio Tarmonger, Johanne Troys, Johanne Fyſher et aliis. Data in domo noſtra capitulari apud Henton die Martis proxime poſt feſtum ſcī Hillarii anno regni Regis Henrici ſexti poſt conqueſtum decimo nono. Nos autem tam cartam predictam ac omnia et ſingula in eadem carta contenta quam ſtatum et poſſeſſionem ipſorum Johannis Forteſcu, Iſabelle et Margerie in meſſuagiis curtilagiis gardinis croftis viis aſiamentis et communis predictis quos virtute ejuſdem carte et liberacionis ſeiſine eis per eandem cartam per predictum nuper Priorem facte adepti

ſunt, ut dicitur, rata habentes et grata ea pro nob's et heredibus noſtris quantum in nobis eſt acceptamus, approbamus ac prefatis Johanni Forteſcu et Iſabelle et dictis heredibus maſculis de corporibus ſuis exeuntibus necnon prefate Margerie ad terminum vite ſue tenore preſencium concedimus et confirmavimus prout carta predicta rationabiliter teſtatur. Et ulterius de uberiori gratia noſtra conceſſimus pro nobis et heredibus noſtris predictis quantum in nobis eſt eiidem Johanni Forteſcu Iſabelle et Margerie quod ipſi omnia et ſingula predicta meſuagia curtilagia gardina croſta et terram cum portiis viis aſiamentis communi paſture et omnibus aliis pertinentiis predictis habeant et teneant eis et dictis heredibus maſculis de corporibus predictorum Johannis Forteſcu et Iſabelle exeuntibus per redditum predium in forma predicta ſupradicta abſque impeticione ſive impedimento noſtri vel heredum noſtrorum Juſticiariorum, Eſcaetorum, vicecomitum, coronatorum aut aliorum ballivorum ſeu miniſtrorum noſtrorum vel heredum noſtrorum quorumcunque eo quod domus ſive prioratus predictus de fundacione progenitorum noſtrorum alicujus aut alicujus progenitoris noſtri de noſtro prioratu exiſtit ſeu eo quod tenementa predicta inter alia data fuerunt et conceſſa domui ſupradicto ſive priori et conventui ejuſdem loci pro tempore exiſtentibus et ſucceſſoribus ſuis per aliquem progenitorum aut anteceſſorum noſtrorum in liberam puram et perpetuam elemoſinam, vel ad aliqua divina ſeu alia ſervicia ſuſtinenda vel facienda ſeu eo quod eadem tenementa de nobis tenentur in capite non obſtante. In cujus, &c. T. R. apud Weſtmonaſterium xij die Februarii.

Per ipſum Regem et de data predicta auctoritate parliamenti.

APPENDIX B.

Inquiſition upon Attainder of Sir John Fortescue, *Knt.*, 4 *November*, 7 *Edw. IV.* (1467).

Taken May 20, 1468, at Ameſbury, Wilts.

INQUISICIO capta apud Ambreſbury in Comitatu Wiltes, viceſimo die Maii Anno regni regis Edwardi quarti octavo, coram Thoma Noreys, Eſcaetore dicti domini regis in comitatu predicto virtute officii ſui per ſacramentum Thome Eyre Johannis Knyght, Willelmi Floure, Johannis Lavyngton, Johannis Weſton, Johannis Noton, Johannis Philippe, Johannis Colles, Johannis Raynold, Johannis Dere, Johannis Bys . . . . Thome Pynkeney, juratorum, qui dicunt ſuper ſacramentum ſuum quod Johannes Forteſcue miles qui auctoritate cujuſdam Actus in Parliamento dicti domini . . . apud Weſtmonaſterium quarto die Novembris Anno regni ſui primo tento, editi, inter alios de alta prodicione erga eundem dominum Regem nunc perpetrata, attinctus . . . ſeiſitus in dominico ſuo ut de feodo quarto die Martii Anno regni ejuſdem regis primo et poſtea de uno meſuagio et centum et quadraginta acris terre cum pertinentiis in Kyngſton Deverell in Comitatu predicto que valet per annum ultra repriſas xl s. Ac de quinque meſuagiis in Trowbrigge in Comitatu predicto ac de dimidia virgata terre in Hilperton in Comitatu predicto que valent per annum ultra repriſas xx s. ac de redditu novem ſolidorum annuatim percipiendos de uno tenemento in Bradford in Comitatu predicto cum revercione dicti tenementi poſt mortem Roberti Brugge et Alicie uxoris ejus qui quidem Robertus et Alicia habent ſtatum de

predicto tenemento ad terminum vite eorum ex dimiſſione dicti Johannis Forteſcu et Iſabelle uxoris ejus ante predictum quartum diem Marcii ac ulterius dicunt quod Idem Johannes Forteſcu fuit ſeiſitus in dominico ſuo ut de feodo eodem quarto die Marcii et poſtea de tribus meſuagiis et quatuor acris terre cum pertinentiis in Chippenham in eodem Comitatu que valent per annum ultra repriſas xij^{s}. ac de dimidia virgata terre cum pertinentiis et ſeptem ſolidatas redditus cum pertinentiis in Sutton in eodem Comitatu que valent per annum ultra repriſas x^{s}. Et ulterius dicunt quod Johannes Brian omnia et ſingula exitus et proficua meſuagiarum, terrarum et tenementorum predictorum a predicto quarto die Marcii dicto Anno primo uſque capcionem hujus Inquiſicionis provenientes, habuit et percepit quo titulo ignorant. In cujus rei teſtimonium huic Inquiſicioni tam predictus Eſcaetor quam Juratores predicti ſigilla ſua alternatim appoſuerunt. Die loco et anno ſupradictis.

Attached to this is an Inquiſition taken at Cirenceſter, 4 Nov., 7 Edw. IV.

THE END.

THE WORKS OF

SIR JOHN FORTESCUE, KNIGHT,

LORD CHANCELLOR TO KING HENRY

THE SIXTH.

DE TITULO EDWARDI COMITIS MARCHIÆ.

BY SIR JOHN FORTESCUE, KNIGHT.

WITH A TRANSLATION INTO ENGLISH

BY THE REVEREND WILLIAM STUBBS,

REGIUS PROFESSOR OF MODERN HISTORY IN THE

UNIVERSITY OF OXFORD

THIS treatiſe, now printed for the firſt time, is one of ſeveral eſſays in which, after the flight of Henry VI. to Scotland, Sir John Forteſcue, who ſhared his exile there, laboured to diſcredit the claim of Edward IV. to the crown of England which the victory at Towton had ſecured to him. It was brought to light by the reſearch of Mr. Alfred Horwood when examining Lord Calthorpe's collection of manuſcripts for the Hiſtorical Manuſcripts Commiſſion in the year 1870, too late to be included in the edition of Forteſcue's Works which appeared in the previous year. There is no other copy known to exiſt, nor do the liſts of his works which I have met with contain any name with which the preſent tract can be identified. The fragments of the "Defenſio Juris Domus Lancaſtriæ," although they cloſely reſemble it, being evidently portions of a different work.

In the "Declaration on Certain Writings ſent out of Scotland," where Forteſcue, in fulfilling the condition of his pardon, is obliged to repeat his former arguments in order to refute them, nearly all the points here put forward may be recognized. The actual writings to which he refers would ſeem, however, to have been in Engliſh, excepting one diſtinguiſhed from the reſt as "the Latin Boke," by which laſt the "De Natura Legis Naturæ" is intended. That this is ſo is ſhown by internal evidence, a paſſage quoted in the Declaration as from "the forſaid Latin Boke" being found in the ſecond part of De Natura.[1] From a ſentence at the end of the Introduction we learn that the ſame ſubject had already been treated by the Author at greater length in an Engliſh work, of which nothing is known to the Editor.

The manuſcript before us forms part of Lord Calthorpe's collection, and is included in a folio volume marked MSS. Yelverton, N. 69. It occupies eight folios and a

[1] See Declaration, p. 534, line 10, and De Natura, part ii. p. 140, at bottom.

half of foolſcap size, and is very regularly written in handwriting of the 16th century. It is headed I.H.S.N.R.I. In a chronological arrangement of Forteſcue's writings this takes an early place among thoſe now extant.

I take this opportunity to expreſs my very warm thanks to thoſe by whoſe great kindneſs I have been enabled to preſent this work to my readers, namely, Lord Calthorpe, Mr. Alfred Horwood, and the Reverend Profeſſor Stubbs. To the firſt for entruſting me with the valuable MS., to Mr. Horwood as well for his early information of its diſcovery, as for making the copy, and to Profeſſor Stubbs for the Engliſh tranſlation. [C.]

29th January, 1877.

DE TITULO EDWARDI COMITIS MARCHIÆ.

INTRODUCTIO MATERIÆ.

CUM, inſtigante humani generis Inimico, veſanâ rabie per bella inteſtina non paucis extinctis regni Angliæ proceribus, diſcentiones et ſciſmata circa jus regiæ Majeſtatis ad Coronam Angliæ exorta ſint, ſuccurrei dum hiis eſſe oportunum permaxime et neceſſarium putavit non mediocris prudentiæ et virtutis miles quidam nobilis et legum expertiſſimus exulantis more apud Scotos in ſua fidelitate ad Chriſtianiſſimum regem Angliæ Henricum Sextum perſeverans. Et quum ejus illuſtrium Dominorum, (eorum præcipuè quos ſanguis regalis venuſtiſſimè exornans nobilitavit,) affiſtentiâ ſeu conſilio, non auſus eſt de vero juſto et indubitato titulo illuſtriſſimi et Chriſtianiſſimi regis Henrici predicti ad Coronam Angliæ diſceptare, ipſum ve diſputare, declarare fortiſſimum, ſeu mediis ut potuit veriſſimum ac indubitatiſſimum demonſtrare, jure ne idem faciat ſub graviſſimâ penâ prohibitus, ſubvenire tamen lapſis et errantibus ſe poſſe exiſtimat, ſi ſaltem pretenſum Edwardi nuper Comitis Marchiæ titulum minus verum eſſe, et ipſum Edwardum non regem legitimum Angliæ ſed uſurpatorem ſolum eſſe regiæ Dignitatis rationibus inevitabilibus demonſtrârit, habeantque per eum fideles hunc non tam brevem quam utilem codicem ad ſuæ fidelitatis augmentationem conſtantiam et defenſionem, removeat item a ſimplicibus puſillis ſcandalum offenſionis, cum veritas ipſis patefiat qui juris et veritatis rei prius erant ignari, cognoſcant inſuper agnitæ veritatis oppugnatores expugnatam eſſe expreſſè falſitatem ſuam ; quod quidem apertius evidentiùſque videbunt ſi codicem illum originalem qui de hiis latius continet in vulgari ſcriptum perlegerint.

CAP. I.

Deſcenſus dicti Edwardi per quem titulum pretendit ad coronam Angliæ ſequitur.

EDWARDUS ipſe fuit filius Richardi, filii Annæ, filiæ Rogeri, filii Philippa, ut aſſeritur, filiæ Lionelli fratris ſenioris Johannis de Gaunt patris regis Henrici quarti, a quo Henricus quintus, a quo Henricus Sextus ; proximuſque ut heres legittimus Richardi ſecundi nuper regis Angliæ, filii principis Edwardi primogeniti Edwardi tertii regis Angliæ, etiam patris ipſorum Lionelli et Johannis, vendicat ſibi jus quod pretendit ad Coronam Angliæ.

Angliæ ſuccederet efficaciter voluit, et ordinavit, in præjudicium, ſi ipſa Margareta heres fuiſſet, legittimorum heredum ab dicto Edmundo Rege per Margaretam Malcolini uxorem deſcendentium; ſed iſta putare, ſeu dicere nefas eſt; quare nec verum eſt ex quo iſta ſequuntur.

Cap. IV.

Secundum exemplum de geſtis Anglorum poſt Conqueſtum.

ITEM, unica proles Henrici Primi regis Angliæ dicta Matilda, primùm Imperatori data in conjugem ac poſt mortem ejus maritata Comiti Andegaviæ, peperit eidem Comiti filium nomine Henricum. Hæc Matilda, mortuo patre ſuo Henrico rege, pacificè ſibi in Ducatum Normanniæ ſucceſſit; non tamen ipſa, ut filius ſuus Henricus, in regno Angliæ Henrico Primo avo ſuo immediatè ſucceſſit, jure et conſuetudine obſtantibus: eo quod mulieribus earum maritis ſeu liberis prætextù tituli muliebris, ut predicitur, ad jus regni et Coronæ ſucceſſio intercluſa erat; omniumque cuſtantias non mediocres cum omni diligentiâ fecerat et labore, ut filium ſuum Henricum prout proximum de ſanguine Henrici primi[1] acciperent in regem, quod etiam ipſum per modum electionis facere noluerunt, ne ad Coronam Angliæ ſe intitulatum dixiſſet jure mulieris; ſique nullum heredem per lineam maſculinam recipere potuerunt, deſcendentem potius quam titulo mulieris aliquem acciperent, propter inconvenientias quæ exinde ſequerentur; jure electionis et non aliter, ex communi aſſenſu procerum et populi, Stephanum Comitem de Bloys, filium ſororis dicti Henrici Primi, in Regem ſuum acceperunt, qui regnavit octodecim annis et ultra, uſque ſcilicet ad finem vitæ ſuæ. Qui tamen Stephanus, mortuis duobus filiis ſuis, cum conſenſù Procerum et Populi in Parliamento liberè per eum convocatorum, ſtatuit et ordinavit, quòd, poſtquam ipſe mortuus fuerit, ſuccederet ſibi Henricus filius Imperatricis, non titulo matris ſuæ, qui nullus erat, ſed electione Baronum et populi in Parliamento; quòd, non ſucceſſionis jure, ſed Parliamenti authoritate, ipſe et filii ſui ſucceſſores ſui maſculi pro perpetuo regnarent, ne aliquo pacto contra jura et conſuetudinem Angliæ aliquem per mulierem ad jus Coronæ Angliæ intitularent.

Cap. V.

Confirmatur idem per legem Angliæ in conſimili caſu.

ITEM, per jura regni Angliæ, ſi poſſeſſio aliqua, terræ portio, vel tenementum aliquod donetur alicui viro et heredibus maſculis ab eo deſcendentibus; dato, quod ſi cui ſic datur hujuſmodi dominium eſſent duo filii, quorum ſenior habuerit filiam et ipſa filium, tunc, mortuo viro, cui terræ hujuſmodi portio vel tenementum, ut præfertur,

[1] The text here is corrupt.

donabatur, et mortuis progenito et filia ejus, vivente filio mulieris, filius junior iſtius cui Dominium ſic datum fuit, hæres erit ejuſmodi Dominii, et maſculi ab eo deſcendentes, et non filius fœminæ, pro tanto quod mulier nullum jus habere poterit in tali hæreditate, et ſecundum jura. "Nemo poteſt plus juris transferre in alium quam ſibi competere dinoſcatur."

Cap. VI.

Confirmatur item per ſimile jus in regnis Franciæ, et etiam Hiſpaniæ, quorum reges, ſicut reges Angliæ, ab antiquo ungebantur.

ITEM in regno Franciæ ſi aliquis ad regalia intitularetur per feminam, aliis deſcendiſſet jus coronæ Franciæ ad regem Navarriæ, et conſin ili titulo aliàs ad Comitem Flandriæ, et poſt conſimili jure ad regem Angliæ, ſicut liquido claret Cronicas Francorum perlegenti; per cujuſmodi titulum longo tempore jus tale ſibi vendicaverint nonnulli reges Angliæ ad Coronam Franciæ, uſque ad tempora Henrici Quinti qui, comperto clarè nullum jus ſibi ex feminâ potuiſſe competere titulo mulieris, coram Caroloe rege Franciæ et regni proceribus, tactis ſacroſanctis, juravit ſe nullo pacto vivente Caroloe prædicto ſe regem Franciæ vocari faceret ſeu proclamaret, quoad potuit permittere, ſolum nomine regentis Franciæ et Heredis prædicti Charoli ad coronam Franciæ contentus, qui, ductâ filiâ regis prædicti, authoritate Parliamenti factus eſt et electus heres Charoli ad Coronam Franciæ ad legittime ſibi in regno Franciæ ſuccedendum; virtute cujus tituli e non virtute deſcenſus a muliere de domo Franciæ, rex noſter Chriſtianiſſimus Henricus Sextus, poſt mortem patris ſui Henrici Quinti et Charoli prædicti, Pariſiis in regem Franciæ ungebatur et ſolemniter coronabatur. Conſimiliter et Dux Lancaſtriæ et Dux Eborum, qui filias Petri quondam regis Hiſpaniæ duxerunt uxores, jus habuiſſent ad Coronam Hiſpaniæ, ſi per mulieres jus aliquod accreſceret maritis ſeu eorum liberis ad regalia regni illius.

Cap. VII.

Inconvenientiæ quæ ſequerentur dato oppoſito.

ITEM, ſi per mulierem jus aliquod ad regalia Angliæ marito mulieris vel liberis ſuis accreſceret, ſequerentur multa inconvenientia quæ in originali recitantur, de quibus pauca hic inferuntur, quia dato quòd, deficiente regi Angliæ filio, eſſent ſibi plures filiæ, per eas vel earundem liberos ſeu maritos fieret diviſio Monarchiæ in plurima regna. Item ſi imperatori ſeu regi mortis ſuæ tempore eſſet ſibi unica proles fœminæ ætatis trium dierum, tantum regnum hujuſmodi deſtitueretur rege ſive imperatore, ad minus uſque ad ætatem ſeptem annorum mulieris; cum mulier rex eſſe non poterit nec ſupremum regimen

in temporalibus ſuper virum ſibi ullo modo competere valebit, cui a Domino dictum eſt, "Quodamodo eris ſub poteſtate viri et ipſe dominabitur tui." Poſtquam quidem ſeptem annorum ætatem, licet hujuſmodi mulieri contrahere ſponſalia, quibus contractis et in facie Eccleſiæ ſolemnitur publicatis, vel ut jura volunt in caſibus conſimilibus, adhuc ſponſus hujuſmodi ex tali contractu ſolemni nec poterit dici vere rex, neque non rex, quoad uſque mulier hujuſmodi ad perfectam ætatem pervenerit, et ſic regnum toto medio tempore ſtaret in ſuſpenſo ſine ſupremo gubernatore, et res publica periclitaretur, præter multa alia inconvenientia quæ ex hoc contingere poſſint: vel ſi per hujuſmodi ſponſalia intitularetur hujuſmodi maritus in regno hujuſmodi, et eſſet vere rex per hujuſmodi mulierem, tunc cum ad perfectam ætatem mulier pervenerit, et nollet ipſa ſtare priori contractui, ſed cum alio contraxerit, et ab eo carnaliter cognita fuerit, ex ſolo tali beneplacito mulieris deperditur primo deſponſato jus ad regalia, et ſic prius non rex rex, et prius rex abſque ſuâ culpâ fit non rex, quæ videntur abſurda maximè ſi loquamur de regibus unctis, cujuſmodi ſunt reges Angliæ Franciæ et Hiſpaniæ, qui tres ſolum ut prædicitur olim ungebantur. Eſt poſitio quòd mulier talis noluerit diſponſari uſque ad triceſimum vel quadrageſimum annum ætatis ſuæ, per totum illud tempus regnum eſſet rege deſtitutum; quòd ſi incolæ regni aliquem alium medio tempore in regem aſſumpſerint, ipſâ poſtea deſponſatâ et habente filium, cedet prior electus a populo deſponſato mulieris vel ejus filio, quod eſt ridiculum. Item mortuo rege marito hujuſmodi mulieris expectaret interim regnum ſine ſupremo gubernatore per totum tempus viduitatis ſuæ, forte uſque ad tempus decem vel viginti annorum, ſeu amplius ad votum mulieris. Item, ſi caſtè viveret mulier per totum tempus vitæ ſuæ, regnum rege careret et periclitaretur ab hoc reſpublica regni. Item cum coactio ſit contra naturam contractûs, tam ex lege divinâ quam humanâ, mulier ex electis poteſt liberè ſibi aliquem ſponſum aſſumere, qui ipſam cognoſcendo reddet matrimonium hujuſmodi conſummatum et indiſſolubile, et ita hujuſmodi mulier aſſumere ſibi poſſet in virum vilem aliquem in genere et virtute infimum, ſervum vel nativum alicujus incolæ regni, faciendo ſervum dominum ſupremum regni; vel poſſet deſponſari alicui qui ſemper inimicabatur incolis hujuſmodi regni ad ejus perpetuam ſubverſionem, vel alicui duci vel comiti ſeu regi alterius regni, qui omnes regni talis proventus ad ſe extra regnum abductos ibi expenderet, ad hujuſmodi regni depauperationem et jacturam et intollerabile damnum.

Cap. VIII.

Argumentum contra prefatum titulum pretenſum ſuadens Philippam non fuiſſe filiam Leonelli.

ITEM in Cronicis et hiſtoriis Angliæ fit expreſſa plana et ſpecialis mentio de liberis omnibus omnium filiorum Edwardi tertii nuper regis Angliæ patris dicti Leonelli qui ſcilicet quot et quales fuerant, de prole autem ipſius Leonelli qui fuit Dux Clarentiæ, id eſt Philippâ ipſâ, nulla fit mentio; quinimo de Leonelli ſucceſſione

tacent, quaſi ſine prole ſeu liberis morientis, quod non tacuiſſent ſi ipſam Philippam habuiſſet filiam legittimam et heredem: Cujus confirmatio eſſe poterit quod nec Edwardus nunc uſurpans ſeu ejus progenitor aliquis a prædictâ Philippâ ut ipſi inquiunt deſcendentes, nomen habuerunt dicti Ducis, ſeu in ducatu ſucceſſit Clarentiæ, vel arma regalia cum differentiâ addita portat ſeu portant, ſicuti Dux ille Clarentiæ fecit, ſed duntaxat arma de Marche et Ulſtera; quorum tamen nullum omiſiſſet cum ad ſui originis ſplendorem et nobilitatis decorem non parum talia ac tanta egiſſent inſignia, (ſicuti nec cæteri domini qui ab ipſo rege Edwardo tertio per mulieres deſcenderant talia inſignia omiſerunt,) ſi ipſe Edwardus nunc uſurpans et ſui progenitores tanti Ducis per mulierem Leonelli heredem legittimi fuiſſent in jure ſucceſſores. Item ſi ipſa Philippa fuiſſet tanti Ducis filia et unica proles, regali ſtirpi tam propinqua, veriſimile eſt quod non fuiſſet in uxorem data tam exili perſonæ, maximè ex ſanguine notato et corupto deſcendenti, puta ex Rogero Mortimero, qui ſuper crimine læſæ majeſtatis in regem Edwardum patrem dicti Leonelli commiſſo, palam et judicialiter convincebatur.

Cap. IX.

Argumentum probans receſſum eſſe a jure ſi quod habere potuit per preſcripſionem legittimam.

INSUPER poſito pro vero quod non eſt verum, videlicet quod Edwardus jam vendicans ſibi regnum, jure fœminarum titulum aliquem ad Coronam Angliæ habere potuiſſet, ita quod nulla conſuetudo ſeu jus aliquod excludens fuiſſet mulieres ab hujuſmodi titulo, quod etiam non admittitur, Edwardus Comes Marchiæ nihilominus jam nullum jus ex hujuſmodi deſcenſû habere poteſt. Nam ſi aliquod habere potuiſſet a parentibus ejus a Philippâ deſcendentibus, per quam tale jus in regno vendicat, a jure tali multipliciter receſſum eſt. Primo, legittimâ præſcripſione; Nam Henricus Sextus, rex noſter Chriſtianiſſimus, pater ſuus Henricus Quintus, et avus ſuus Henricus Quartus a ſexaginta annis ultraque et citra continuè fuerunt in pacificâ poſſeſſione regni et Coronæ Angliæ, ac ſicut reges Angliæ temporibus ſuis pacificè et quietè regnaverunt, ſceptrumque Angliæ portaverunt, unctionem et regalia inſignia receperunt; et unuſquiſque tempore ſuo ſic quietè regnavit, ſceptrumque portavit, unctionem et regalia inſignia recepit, eiſdemque uſus eſt, præſentibus ſucceſſivè progenitoribus iſtius Edwardi nunc uſurpantis, non contradicentibus ſed tacitè et expreſſè conſentientibus et in nullo reclamantibus; licet nonnulli progenitorum iſtius Edwardi contra reges ſuos clam conſpiraverunt aliquando et proditiones contra fidellitatem ſuam facere conabantur crimen læſæ majeſtatis incurrendo. Cum ergo preſcriptio legittima titulus eſt ſufficiens ad extinctionem juris prius adquiſiti, ſi Edwardus titulum aliquem habere potuiſſet ex ipſâ Philippâ, ut nunquam habuit, per legittimam præſcripſionem a tali jure ſufficiente excluderetur.

Cap. X.

Confirmatio ſumpta ab Auguſtino de Civitate Dei prout recitatur in Libro qui dicitur Compendium Morale.

HUIC bene conſonat Auguſtinus, inquiens quatuor eſſe quæ titulum alicujus regis approbant, et ipſum in regno aliquo firmant et ſtabiliunt, quæ ſunt, Permiſſa Divina, Approbatio Eccleſiaſtica, Conſenſus Populi, et Poſſeſſio longo tempore continuata. Et horum quatuor nullum Chriſtianiſſimo regi noſtro Henrico deeſt. Nam ex omni conſenſû omnium regni procerum et plebis per tantum tempus fuerunt Henricus rex modernus, et Henricus Quintus pater ejus et Henricus Quartus avus ejus, in pacificâ poſſeſſione Regni et Coronæ Angliæ, quantum ſufficit ad preſcriptionem regni legittimam, et talis eſt longitudo temporum, quæ requiritur ad dictum Auguſtini et ſufficit. Quoad Eccleſiaſticam approbationem liquet, nam, ſine interruptione vel contradictione aliquâ, admiſſi et approbati fuerunt dictorum regum Angliæ Ambaciatores, legittimique Procuratores in Conſilio Conſtantienſi et Baſilienſi, et in Curiâ Romani univerſaliter. Omnes etiam Papæ a ſexaginta annis ultra et citra ipſis tribus ſucceſſivè, et eorum unicuique ut veris et legittimis Angliæ regibus litteras Apoſtolicas et Bullas tam gratiæ quam communis juſtitiæ tranſmiſerunt, Archiepiſcopos et Epiſcopos Angliæ ad ipſorum regum et eorum unicujuſque petitiones et deſideria confirmaverunt, et conſecrari mandârunt. In quibus omnibus Bullis ſeu Brevibus Apoſtolicis eos reges, et eorum unumquemque regem Angliæ appellaverunt, et ſcripto ſuo confirmaverunt. Et jam nuper, citra dicti Edwardi a Papa Pio moderno agnitam uſurpationem, regi noſtro Chriſtianiſſimo Henrico ab eodem Sanctiſſimo Papa in quadam ſui tranſmiſſâ Bullâ, in fine ſcilicet Novembris Anno Domini Milleſimo CCCC^mo^ ſexageſimo primo, ex poſſeſſione et jure patris et avi ſui, id eſt Henrici Quinti et Henrici Quarti, Papa approbat titulum Chriſtianiſſimi regis Henrici VI^ti^, vocans eum Chariſſimum filium regem Angliæ, et inſurgentes contra eum inimicos ſuos, et morientes in cauſâ ſuâ apud Northampton fideles; irreprobat etiam temeritatem ipſius atrociſſimi Legati, tam aſſiſtenciâ et conſilio, quæ præbuit inimicis regis, quam erigendo vexilla Eccleſiæ contra eum et fidelium ſuorum exercitum et contra voluntatem ejuſdem Sanctiſſimi Patris, ut ipſemet celſitudini regiæ reſcribit, in abutendâ poteſtate ſibi commiſſâ, injuſte promulgando ſententiam excommunicationis in fideles eidem regiæ celſitudini, et fidelibus regis in juſta cauſa dimicantibus, et ſic dimicando virtuoſè occumbentibus, ſepulturam debitam interdicendo. Promittit inſuper Papa in eiſdem regi ſcriptis, illum nephandiſſimum Legatum, quàm primùm contigerit eum revocare, ſecundum demerita ſua et ſecundum exigentiam delictorum ſuorum ſic corrigere et punire, quod erit ipſe in exemplum aliis in futurum, ne ſic deinceps contra jura et voluntatem ſummi Pontificis, vel ſuam vel ſui ſucceſſivi in ſede eadem Apoſtolica, aliqui conſimiliter

Petri abutantur poteſtate. Conſulit item ſanctiſſimus Papa, ac ſub benedictione Apoſtolicâ eidem Chriſtianiſſimo regi noſtro Henrico præcipit ad viriliter pro jure ſuo concertandum, non ſecludens ab eo beneficium juris, puta quod omnes Anglici, et cæteri de jure domini ſui ſubjecti arma contra ſe ferentes, inſurgenteſque et rebelles, quo ad veram obedientiam redierint, pro excommunicatis habeantur. Quod etiam Chriſtianiſſimus et piiſſimus Chriſti miles, rex noſter Henricus, per unum Deum a quo omnis poteſtas eſt in cœlo et in terra, regnavit, regnum ejus et acceptantem et approbantem, ex hiis quæ ſequuntur apparet. Primo, quod quando defuit ſibi omnis dominandi voluptas, omnis regnandi cupiditas, ac omnis eadem deſiderandi facultas anno ætatis ſuæ primo Deus ipſum in ſolio paterno et avi ſui benigniſſime collocaverat, quem poſt ætatis ſuæ ſeptennium, toto conſentiente populo, ſolemniter coronari diſpoſuit et inungi, non communi oleo ſacro ſed præordinato ad Domino ad eum cum illo inungendum, quod tradidit pia ejus advocatrix beatiſſima virgo Maria Sancto Thomæ Cantuarienſi Archiepiſcopo in Ampullâ quæ etiam ad huc apud eundem Chriſtianiſſimum regem Henricum diligentiſſimè reſervatur, dicens ei, "reges Angliæ, qui hoc oleo inungentur, clementes erunt et pugiles Eccleſiæ," virtute cujus debitæ ſibi unctionis per mundiſſimarum ſuarum manuum contactum labe aliquâ ut pote ſanguine homicidii et fame luxuriæ incontaminatarum, languentes morbo regio, de quibus medici expertiſſimi deſperaverunt, uſque in hodiernum diem optatam Domino conferente recipiunt ſoſpitatem ad Dei omnipotentis laudem, de cujus gratiâ venit gratia ſanitatum, ad videntium et aſſiſtentium fidelium letitiæ, ad ipſum regem conſtantiam, et ſui indubitatiſſimi tituli, Domino approbante, confirmationem. Quod ſi objiciatur quia talis virtus in ſanatione languentium præfato morbo, cum ſequitur manuum inunctionem regalem, ita concomitabatur regulariter contactum manuum Edwardi ſicut Henrici regis noſtri Chriſtianiſſimi; unde vel utriuſque vel nullius eorum titulum quia hujuſmodi opera ſanitatum regulariter operatur, talis oleo ſacrato languentium curatio, approbabit; ad hoc dicitur, quod unus Deus noſter per nullum mortalem hujuſmodi opera ſanitatum regulariter operatur qui tali oleo ſacrato inungitur, ſicut talis per hujuſmodi unctionem ſacram Chriſtus Domini ſeu unctus Domini ordinatur, qualis nullus eſt niſi is qui ritè debitè et legittimè inungitur. Quod ut ſincerè concipiatur, notandum, quòd, ſicut inunctione ſacramentali in ordinatione alicujus in Chriſtum Domini ſacerdotem inter cætera tria neceſſario requirantur, ſcilicet Miniſter debitus, ut puta Epiſcopus, cum intentione, debita forma ordinationis et inunctionis, et materia debita, id eſt perſona apta hujuſmodi ordinem ſuſcipere et inunctionem, (propter quorum tertii defectum mulier, ab ipſo credente ipſam eſſe virum, per unctionem illam quam ab Epiſcopo recipit nec fit ſacerdos, ſeu Chriſtus Domini, vel unctus Domini confirmatur); in unctione regali requiritur neceſſario, inter cætera, perſona debita et apta de jure hujuſmodi benedictionem et inunctionem rite ſuſcipere, talis ſcilicet vir, qui inter cætera juſtum habet titulum ad Coronam quam recipit ſeu regnum ſuper quod inungitur, id eſt, populum ligeum ſibi ritè legittimè et de jure ſubditum, cujuſmodi non habet Edwardus in regno Angliæ, cum ipſe et omnes incolæ regni Angliæ fuerunt et adhuc de jure

ſunt ſubditi Chriſtianiſſimo regi noſtro Henrico, a quâ ſubditione ſeu ſervitio debito non poſſunt authoritate propriâ, ſeu omnium ſimul ſic ſibi ſubditorum, aliquo modo reſilire ſeu abſolvi. Nam ſi unctio et coronatio talis per Epiſcopum Cantuarienſem ſufficeret ad ordinandum aliquem in regem unctum Domini ſeu Chriſtum Domini, tunc ipſe ad clamorem inſurgentium in Kantiâ poſſet pro libito unum alium ipſis in regem ordinare, etiam ad placitum quot quantoſque voluerunt unctos Domini ſeu Chriſtos Domini ordinare; quod eſt ridiculum. Relinquitur ergo quòd, propter defectum veri tituli ad Coronam Angliæ, Edwardus nunc uſurpans nequâquam rex unctus Domini ſeu Chriſtus Domini per illam inunctionem et coronationem ordinabitur.

Cap. XI.

Argumentum oſtendens quod non poteſt vere dici quod Edwardus eligitur a Domino in regem Angliæ per privatam et occultam Domini diſpoſitionem.

PRÆTEREA nulli in dubium vertitur talem regem ritè per Deum regnare, qui ſecundùm legem vel conſuetudinem regni ſui laudabilem, jure divino ſeu eccleſiaſtico non repugnante, rite inungitur, coronatus, ceptra regni tenet hujuſmodi: iſtud patet. Nam in lege Chriſti non ſolet Dominus regnum alicujus regulariter alio modo apputare, et ideo ſicut poſtquam Dominus in Teſtamento veteri, per legem ab ipſo immediate edictam, regnum Judæ formavit in manû David, intitulando regnum ſibi et legittimis filiis ſuis, inîquiens, de fructû ventris tui ponam ſuper ſedem tuam; non fuit licitum Populo Judæ, ob culpam aliquam filiorum David transferre a ſemine ejus regnum Judæ ad ſanguinem extraneum; ita nec licitum eſt incolis Angliæ vel alterius alicujus regni transferre regnum hujus ab incumbente pro tempore regnante ſecundum legem vel conſuetudinem laudabilem regni hujuſmodi ad perſonam alteram; et præcipuè prætextû privatæ diſpoſitionis ſeu electionis divinæ de altero, dum modo talis electio ſeu diſpoſitio divina non innoteſcit palam ex manifeſtâ certâ et autenticâ revelatione: vis hujus rationis in hoc eſt quia lex vel conſuetudo laudabilis alicujus regni, non contraveniens juri divino ſeu eccleſiaſtico, eſt lex a Domino edita mediatè ſeu approbata, quæ per habentes ab Eo poteſtatem hujuſmodi condere condita eſt et approbata. Claret utrâque; non eſt ſimile de Chriſtianiſſimo rege noſtro Henrico Sexto et uſurpatore Edwardo, et de David ſancto viro et Saule. Primo, quod nunquam firmatum erat lege aliquâ regnum Judæ et Sauli et legittimis filiis ſuis, nec ipſe jure hereditario regnum Judæ adeptus eſt, ſicut rex noſter Chriſtianiſſimus Henricus regnum Angliæ titulo hereditario adeptus eſt. Secundo quod, Saule propter ſcelera ſua rejecto, David virtuoſus ad regnum promovebatur Judeorum. Cujuſmodi comparatio tranſverſa eſſet inter Chriſtianiſſimum regem Henricum pium, continentem et honeſte viventem, et Edwardum regni Angliæ uſurpatorem.

Cap. XII.

Incidens argumentum oſtendens enorme delictum Angliæ incolarum qui aſſiſtebant Edwardo uſurpatori.

PRÆTEREA ſi Edwardus iſte ex juſto ſibi titulo, ut inquit, inſurgere voluiſſet contra regem ſuum, ut eum a regno dejiceret et eliminaret, omnes tum ligei homines Henrico regi ſubditi de jure cum Edwardo contra fidelitatem ſuam in regem inſurgentes inexcuſabiliter in Dominum et ipſum regem ſuum deliquerant. Nam in caſu, quod rex noſter Chriſtianiſſimus Henricus injuſtè ceptrum regni tenuiſſet, ſicut juſtiſſimè tenuit, ipſe ſolus in hôc peccaſſet, et omnes viri ligei ſui pugnantes pro eo ex fidelitate ſuâ quâ ſibi tenebantur ut dominum contra inimicos ſuos defenderent virtuoſe præliâſſent, et laudabiliter et meritoriè dimicâſſent; ſicut capitur ab Auguſtino contra Manicheos, et ponitur in Canone xxiij. Queſtione primâ, "*Quid Culpatur in Bello.*"

Cap. XIII.

Argumentum fundatum ſuper illo juris quia per renunciationem et factum contrarium recidit a jure.

INSUPER poſt mortem Rogeri Comitis Marchiæ, a quo dictus intrudens Edwardus titulum ſuum prætendit, Edmoundus filius ejus qui ſibi ſucceſſit in Comitatum Marchiæ in Cancellaria regis Henrici Quinti, ut moris eſt heredum poſt prædeceſſorum mortem, liberationem ac poſſeſſionem Comitatus Marchiæ perſequebatur et petiit; atque ſic a manibus regis, tanquam a vero ſuo naturali rege et Domino et præcipuo, terras ſuas recepit, ac pro ipſis tanquam filius et heres dicti Comitis Rogeri Henrico Quinto homagium ligeum ac fidelitatem preſtitit, ipſumque Henricum pro vero ſuo rege juſto ac naturali domino verbo et facto fatebatur recognovit et approbavit. Et poſtmodum, in quibuſdam indenturis tam ſigillo armorum quam ſigno manuali ipſius Edmundi conſignatis, per quas ipſe ut ſoldarius cum præfato rege Henrico Quinti retentus fuit in guerrâ ſuâ in Ducatu ſuo Normanniæ, ipſum eſſe regem Angliæ ac dominum ſuum ſupremum et ligeum nominavit, affirmavit, et recognovit, et ſicut ligeus et fidelis ſubditus ſuus durante vitâ ſuâ permanſit. Idemque Edmundus Comes Marchiæ, poſt mortem Henrici Quinti, conſimile homagium ligeum et fidelitatem preſtitit Henrico Sexto in ætate ſuâ tenerimâ, tanquam regi ſuo et vero heredi Henrici Quinti. Quo etiam Edmundo ſine liberis defuncto, Comitatus Marchiæ ad Richardum patrem Edwardi intruſoris jure hereditario devenit, qui per omnia pro eiiſdem ejuſdem Comitatus poſſeſſione ac deliberatione, prout Edmundus prius fecerat, quæ juris fuerant more Curiæ Cancellariæ adimplevit. Qui

etiam Richardus factus locum tenens Henrici Sexti primùm in Franciâ, et poſtea in Hiberniâ, per ſcripta ſua indentata ſigillataque armorum ſigillo et manû propriâ ſubſcripta, eidem regi promiſit fideliter ſecundùm formam et effectum pactorum ſibi deſervire tanquam ſibi ſubditus et verus ligeus; et in utroque ſcripto ipſum Dominum ſuum ſupremum et præcipuum et regem Angliæ nominavit, verbo et facto recognovit, et approbavit. Inſuper idem Ricardus, tempore infirmitatis cujuſdam ipſius Henrici Sexti, authoritate Parliamenti in Protectorem Angliæ ordinatus, durante regis ægritudine per ſcripta ſua in parliamento ipſo et poſt, frequenter pro vero Domino ſuo præcipuo ac ſupremo et Rege ſuo recognovit, fatebatur, et tam ſcripto quam verbo et facto approbavit.

Cap. XIV.

Argumentum probans quod per abjurationem excludebatur a jure, ſi quod habere potuit.

ITEM ſæpenumero juravit Richardus pater Edwardi uſurpatoris, ad ſancta Dei Evangelia et ſuper corpus Dominicum viſum et receptum, quod ipſe eſſet ſemper fidelis ligeus Henrici Sexti regis Angliæ, et quod ſemper pro poſſe adjuvaret ad omnia quæ ad honorem et gloriam dignitatis et juris et nominis regii pertinent, in quo juramento continetur expreſſa abjuratio contrarii et excluſio juris pretenſi ad Coronam. Conſimile juramentum præſtitit Edwardus intruſor, in præſentiâ Archiepiſcopi Cantuarienſis et Cleri tunc convocati ad eccleſiam Sancti Pauli London. Præſtitit namque juramentum corporale, tactâ cruce Cantuarienſi, quod ipſe regem noſtrum Chriſtianiſſimum Henricum honoraret pro rege ſuo, et ſibi obtemperaret ut vero Domino ſuo præcipuo ligeo et ſupremo, durante vitâ prædicti Henrici regis et ſuâ, ipſumque ut verum regem ſuum contra omnes viventes pro poſſe ſuo defenderet; atque in Parliamento tento apud Weſtmonaſterium ad idem obſervandum ſe promiſit, et ſua ſponte obligavit, præter juramenta pluries præſtita temporibus ſuæ creationis in militem, et poſt in Marchiæ Comitem, quibus (ut utique moris eſt) temporibus juravit de fidelitate ſervandâ regi noſtro Henrico, et de ipſum defendendo contra omnes adverſantes ſibi.

Per hæc argumenta et rationes inſolubiles quaſi ſolum, principaliter contra pretenſionem Edwardi uſurpatoris militantia, tanquam per remotionem impedimenti, ſubinfertur metuendiſſimum Dominum noſtrum Regem Henricum Sextum, juſto claro ac indubitato titulo, verum eſſe et rectum regem Angliæ; atque ſuper Anglicos omni jure naturali divino et humano regnare debere, dictoque Edwardo uſurpatori aut ſuis progenitoribus nullum jus ad Coronam Angliæ competiviſſe aut competere debere; ad quæ latiùs declaranda, et præcipuè ad indubitatum regis noſtri Henrici titulum ad Coronam Angliæ potiſſimè declarandum non deſunt rationes fortiſſimæ fundatæ ſuper jure divino et humano, quæ, volente Domino, optimâ horâ quâ non poterunt reſiſtere ſibi omnes adverſarii regis noſtri cunctis palam

innotescent, cum verâ litterâ Apostolicâ a Papa moderno Pio in Scotiam missâ Christianissimo regi nostro Henrico de supradictis plenarius eloquenti, et cum verâ copiâ seu transcripto Bullarum missarum Ludowico, cognato regis nuper in Francia uncto, in quibus ipsum hortatur sub omnipotentis Dei benedictione, papali authoritate, in adjutorium Henrici Regis Christianissimi ad suorum inimicorum expugnationem et finalem confusionem, et sui in trono patris stabilem resistentiam, ad honorem Domini nostri Jhesu Christi, Cui sit honor et gloria in secula seculorum. Amen.

Memorandum; quod Henricus Quartus fuit proximus heres masculus ex parte patris sui Henrico tertio quondam regi Angliæ, videlicet, ipse fuit filius Johannis, filii Edwardi regis, filii Edwardi, filii Edwardi filii prædicti regis Henrici tertii. Et idem Henricus Quartus fuit ex parte matris suæ proximus de sanguine eidem Henrico tertio, videlicet ipse fuit filius Blanchiæ, filiæ Henrici, filii Edmundi vulgariter nuncupati Edmundi Crookback, filii prædicti Henrici tertii. Sic ex illâ lineâ præfatus Henricus Quartus fuisse rex Angliæ nullatenus potuit, eo quod regnum illud per heredes masculos (per masculos descendentes, ut supra annotatur,) hereditabile existit, et hereditatum per hujusmodi heredes a toto tempore fuit et non per alios; ac insuper idem Henricus Quartus olim Rex Angliæ, erat proximus heres masculus Richardo Secundo, quondam regi Angliæ, et sibi propinquissimus in lineâ consanguinitatis inter omnes tunc viventes; erat enim filius avunculi Regis Richardi, id est filius Johannis fratris Edwardi patris prædicti Regis Richardi. Num quamvis ita sit quòd ante hæc tempora assumpti fuerunt in reges Scotiæ quidam de stirpe regiâ Scotiæ per mulierem vel per mulieres ab eâ descendentes; verbi gratiâ, quando terminata erat linea masculorum a Malcomo descendentium linealiter, Balliola qui de seniori filiâ David filii Henrici, filii David Cammor olim regis Scotiæ descenderat, assumptus est et coronatus in regem Scotiæ; et consimiliter post eum alius, deficiente sibi similiter herede masculo ab ipso linealiter descendente, Steward, qui descenderat de [prædicto] Bruiz rege per fœminam filiam dicti Bruize supremum regnum Scotorum [adeptus] est; nunquam tamen, vivente aliquo masculo, aliquo de stirpe regis per sexum masculinum linealiter descendente, aliquis descendens per fœminam assumptus est in regem regnando pacificè; Quod nec congruum fuisset. Nam si sic esset poterat vilis aliquis genere, et virtute infimus persona ex patre ignobilis assumi in regem, vivente herede masculo de nobili illo regali origine descendente, qui simul et nobilem regum præcedentiam et sanguinem in se præservasset et cognomen; quæ videretur absurdum, et a ratione rectâ longè alienum. In cronicis ideo minimè refertur, spretâ nobili successione heredum masculorum linealiter per sexum masculinum descendentium, successionem regnasse fœminarum. Præterea, quamvis ita sit secundum Jura Civilia quia hæreditas patris defuncti secundùm equales portiones dividi habeat inter filios suos, secundùm tamen eadem jura, jus regni ejus regalia competunt seniori filio; ex quo apparet non esse consimilia jura de regali et possessione privatâ, &c.

Explicit.

FORTESCUE.

DE TITULO EDWARDI COMITIS MARCHIÆ.

TRANSLATED BY THE

REVERAND PROFESSOR STUBBS.

INTRODUCTION.

WHEREAS, at the inſtigation of the enemy of the human race, after that in mad rage not a few of the nobles of the realm of England have been extinguiſhed through inteſtine wars, diſſenſions and diviſions have ariſen about the right of the king's majeſty to the crown of England, a certain knight of no mean prudence and valour, noble and moſt experienced in the laws, perſevering in his fidelity to the moſt Chriſtian King of England, Henry VI., in the manner of one in exile among the Scots, has thought it in the higheſt degree opportune and neceſſary that a remedy ſhould be applied to theſe diſſenſions.

And whilſt by the aſſiſtance or advice of his illuſtrious lords (thoſe eſpecially whom the blood royal ſo gracefully adorns and ennobles), he dares not to diſcuſs the true, juſt, and undoubted title of the moſt illuſtrious and moſt Chriſtian King Henry aforeſaid to the crown of England, or to debate it, or to declare it ſtrongeſt, or, as he could do, to demonſtrate it to be moſt true and moſt undoubted, being rightly forbidden to do the ſame under the heavieſt penalty; he thinks nevertheleſs, that he may aſſiſt thoſe who have miſtaken and are in error, if he can demonſtrate by inevitable reaſons that the pretended title of Edward ſometime Earl of March is untrue, and that Edward himſelf is not the lawful King of England, but only a uſurper of the royal dignity; and if by his means the faithful poſſeſs this book, not ſo ſhort as uſeful to the increaſe, conſtancy, and defence of their fidelity; if alſo he removes the ſtumbling-block of offence out of the way of the ſimple little ones, by making manifeſt the truth to thoſe who before were ignorant of the right and truth of the matter; and if, moreover, the aſſailants of the recogniſed truth acknowledge that their falſity has been utterly defeated; which indeed they will ſee more openly and more evidently if they read through that original book, which treats more at large of theſe matters in the vulgar tongue.

the ſaid Henry I., who reigned eighteen years and more, that is to ſay, even to the end of his life; which Stephen, however, when his two ſons were dead, did, with the conſent of the lords and people called together by him freely in parliament, enact and ordain that after he himſelf was dead Henry the ſon of the Empreſs ſhould ſucceed him, not by the title of his mother, which was no title at all, but by the election of the barons and people in parliament, to the end that, not by right of ſucceſſion but by authority of Parliament, he and his ſons his ſucceſſors being males ſhould reign for ever, leſt by any means, contrary to the laws and cuſtom of England, they ſhould entitle any one to the right of the crown of England through a woman.

Cap. V.

The ſame is confirmed by the law of England in like caſe.

AGAIN, by the laws of the kingdom of England, if any poſſeſſion, portion of land, or tenement be given to any man and the male heirs deſcending from him; given that if he to whom ſuch demeſne is thus given had two ſons, whereof the elder ſhould have a daughter, and ſhe a ſon; then when the man was dead to whom ſuch portion of land or tenement was given, as aforeſaid, and the firſt-born ſon and his daughter were alſo dead, the ſon of the woman being alive, the younger ſon of the man to whom the demeſne was ſo given ſhall be heir of that demeſne, and the males deſcending from him and not the ſon of the woman, for as much as the woman can have no right in ſuch inheritance, and according to the laws "No one can transfer more right to another perſon than is known to belong to himſelf."

Cap. VI.

It is confirmed alſo by the like right in the kingdom of France, and of Spain alſo, the kings whereof, like the kings of England, were from ancient times anointed.

AGAIN, in the kingdom of France, if any one were entitled to royalty through a woman, the right to the crown of France would have at one time deſcended to the king of Navarre, and at another time by like title to the Count of Flanders, and afterwards by like right to the King of England, as clearly appears to any one who reads the chronicles of France. By this manner of title certain Kings of England have for a long time claimed ſuch a right to the crown of France, even to the times of Henry V., who having found out clearly that no right could have devolved from a woman upon him by the title of the woman, did, in the preſence of Charles King of France and the nobles of the kingdom, touching the Holy Goſpels, ſwear that he would by no means, during the life of

the aforeſaid Charles, cauſe himſelf to be called, or proclaim himſelf King of France, ſo far as it lay in his power, being content with the name of only Regent of France and heir of the aforeſaid Charles to the crown of France; who, having married the daughter of the aforeſaid king, was, by the authority of the Parliament, made and ſelected heir of Charles to the crown of France, to ſucceed him lawfully in the kingdom of France; by virtue of which title, and not by virtue of deſcent from a woman of the houſe of France, our moſt Chriſtian King Henry VI. was after the death of his father Henry V., and of the aforeſaid Charles, anointed King of France at Paris, and ſolemnly crowned.

In like manner, alſo, the Duke of Lancaſter and the Duke of York, who married the daughters of Peter ſometime King of Spain, would have had a right to the crown of Spain, if through women any right accrued to their huſbands or their children to the royalty of that kingdom.

Cap. VII.

Inconveniences which would follow on the oppoſite ſuppoſition.

AGAIN, if through a woman any right to the royalty of England ſhould accrue to the huſband of the woman or to her children, many inconveniences would follow which are recited in the original, of which a few are inſerted here: becauſe, given that failing a ſon to the King of England, he had ſeveral daughters, through them or their children or huſbands there would be made a diviſion of the monarchy into ſeveral kingdoms. Again, if an emperor or a king had at the time of his death an only child, a female of the age of three days, ſo great a kingdom would thus be deſtitute of king or emperor, at leaſt until the female child were ſeven years old; ſince a woman cannot be a king, nor can the ſupreme government in temporals over the man devolve upon her by any means, ſeeing that the Lord ſaid to her, "Thou ſhalt be under the power of the man and he ſhall rule over thee." After the ſaid age of ſeven years, indeed, it is lawful for ſuch woman to contract marriage; which being contracted and ſolemnly publiſhed in the face of the church as the laws will in like caſes, ſtill ſuch huſband will from ſuch ſolemn contract be able to be called truly neither king nor not-king, until ſuch woman ſhall have come to full age; and ſo all the meantime the kingdom would ſtand in ſuſpenſe without a ſupreme governor, and the commonwealth would be endangered; beſides many other inconveniences which may follow. Or if, through ſuch marriage, ſuch huſband ſhould in ſuch kingdom be entitled and ſhould be truly king through ſuch woman, then when the woman ſhould have come to full age, and ſhould be unwilling to abide by her former contract, but ſhould have contracted with another and have been known carnally by him, by the mere ſuch caprice of a woman is loſt to the firſt eſpouſed the right to the royalty; and ſo he who was before not-king becomes king, and he who was before king becomes without his own fault not-king; which things ſeem

abſurd, moſt eſpecially if we ſpeak of anointed kings, ſuch as are the kings of England, France, and Spain, which three only, as is aforeſaid, were anciently anointed. Suppoſing that ſuch a woman ſhould be unwilling to be married up to the thirtieth or fortieth year of her age, during all that time the kingdom would be deſtitute of a king; but if the inhabitants of the kingdom ſhould in the meantime have taken another perſon for their king, ſhe afterwards having married and having a ſon, the firſt elected by the people will have to give way to the perſon eſpouſed of the woman, or to his ſon, which is ridiculous. Again, ſuppoſing the king the huſband of ſuch woman to die, the kingdom would in the meanwhile wait without a ſupreme governor through the whole time of her widowhood, perhaps for the ſpace of ten or twenty years or more at the will of the woman. Again, if the woman ſhould live in chaſtity, the kingdom would be without a king all her lifetime and from this the commonweal of the kingdom would be imperilled. Again, ſince compulſion is contrary to the nature of a contract by divine law as well as human, the woman may freely take to herſelf any huſband out of a choice; who by knowing her will render ſuch matrimony conſummate and indiſſoluble, and ſo ſuch woman might take to herſelf as a huſband ſome man vile in race and of the loweſt degree in virtue, a ſlave or ſerf of any inhabitant of the kingdom, making a ſlave lord ſupreme of the kingdom: or ſhe might be eſpouſed to ſome one who was always at enmity with the inhabitants of ſuch kingdom, to its perpetual overthrow: or to ſome duke, or count, or king of another kingdom, who would carry off all the revenues of ſuch kingdom to himſelf, and there ſpend them to the impoveriſhment and loſs and intolerable damage of ſuch kingdom.

Cap. VIII.

Showing Argument againſt the aforeſaid pretended title, that Philippa was not the daughter of Lionel.

AGAIN, in the chronicles and hiſtories of England is made expreſs, plain, and ſpecial mention of all the children of all the ſons of Edward III., ſometime King of England, father of the ſaid Lionel, that is to ſay, who, how many, and of what ſex they were: but of the iſſue of Lionel himſelf, who was Duke of Clarence, that is, of this Philippa, no mention is made: nay, they are ſilent even about the ſucceſſion of Lionel, as if he had died without iſſue or children; which they would not have been if he had regarded Philippa as his lawful daughter and heir. Whereof it may be regarded as a confirmation that neither Edward now uſurping, nor any progenitor of his, deſcending as they ſay from the aforeſaid Philippa, has had the name of the ſaid duke, or has ſucceeded in the duchy of Clarence, or bears or bear the royal arms (of Anne) with a difference added as that Duke of Clarence did, but only the arms (of Anne) of March and Ulſter; none of

which, however, they would have omitted, ſince, in conſideration of the ſplendour of their origin and honour of nobility, they would have ſet no ſlight value on ſuch and ſo great bearings; as the reſt of the lords who deſcended through women from the ſaid King Edward III. have none of them omitted ſuch bearings; if this Edward now uſurping, and his forefathers had been the lawful ſucceſſors of ſo great a duke in his right through a woman heireſs of Lionel. Alſo, if this Philippa had been the daughter and ſole iſſue of ſo great a duke ſo near to the royal ſtock, it is probable that ſhe would not have been given in marriage to ſo mean a perſon, eſpecially deſcending from marked and corrupted blood, that is, from Roger Mortimer, who for the crime of high treaſon committed againſt King Edward the father of the ſaid Lionel, was openly and judicially convicted.

Cap. IX.

Argument proving that lapſe of ſuch right, if he could have had any, had been made by legitimate preſcription.

AGAIN, taking to be true what is not true—namely, that Edward now claiming the kingdom could have had in right of women any title to the crown of England, ſo that there had been no cuſtom or law excluding women from ſuch title, which, however, is not admitted, Edward Earl of March nevertheleſs can now have no right from ſuch deſcent. For if he could have had any from his parents deſcending from Philippa, through whom he challenges ſuch right in the kingdom, abandonment of ſuch right has occurred in ſeveral ways. Firſt, by lawful preſcription: for Henry VI. our moſt Chriſtian king, his father Henry V., and his grandfather Henry IV., have been continuouſly for ſixty years, more or leſs, in peaceable poſſeſſion of the kingdom and crown of England, and have reigned as kings of England in their times peaceably and quietly, and have borne the ſceptre of England, have received unction and the inſignia of royalty, and each in his time has reigned ſo in quiet, and borne the ſceptre, and received unction and the inſignia of royalty, and has uſed the ſame, the ſucceſſive progenitors of this Edward now uſurping being preſent, not contradicting, but ſilently and expreſſly conſenting, and in nothing reclaiming; although ſome of the progenitors of this Edward have conſpired ſometimes ſecretly againſt their kings, and attempted to make treaſons contrary to their fealty, incurring the charge of high treaſon. Since then lawful preſcription is a title ſufficient to extinguiſh a right before acquired, if Edward could have had any title from the ſaid Philippa, which he never had, he would be by lawful preſcription ſufficiently excluded from ſuch right.

Cap. X.

Confirmation taken from Auguſtine "de Civitate Dei," as it is quoted in the book which is called "Compendium Morale."

WITH this Auguſtine well agrees, ſaying that there are four things which approve the title of any king, and confirm and eſtabliſh him in any kingdom; which are Divine permiſſion, Eccleſiaſtical approbation, Conſent of the people, and Poſſeſſion for a long time continued, and of theſe four none is lacking to our moſt Chriſtian King Henry. For by the entire conſent of all the nobles and commons of the kingdom, Henry the preſent king, and Henry V. his father, and Henry IV. his grandfather have been for so long time in peaceable poſſeſſion of the kingdom and crown of England as ſuffices to the lawful preſcription of the kingdom, and is ſuch a length of time as is required according to the dictum of Auguſtine, and ſuffices.

So far as regards eccleſiaſtical approbation it is clear; for without any interruption or contradiction the ambaſſadors of the ſaid kings of England and their lawful procurors have been admitted and approved in the council of Conſtance and of Baſel, and in the court of Rome generally. All the popes alſo for ſixty years more or leſs have tranſmitted to thoſe three in ſucceſſion, and to each of them as true and lawful kings of England apoſtolic letters, and bulls as well of grace as of common juſtice; have confirmed archbiſhops and biſhops of England at the petitions and deſires of thoſe kings, and of each of them, and ordered them to be conſecrated. In all which bulls or briefs apoſtolic they have called them kings, and each of them king of England, and have confirmed it by their writing; and now lately, ſince the recognition by the preſent Pope Pius of the uſurpation of the ſaid Edward, in a certain bull of his tranſmitted by the moſt holy Pope to our moſt Chriſtian King Henry, that is to ſay, at the end of November A.D. 1461, owing to the poſſeſſion and right of his father and grandfather, that is to ſay, Henry V. and Henry IV., the Pope approves the title of the moſt Chriſtian King Henry VI., calling him his deareſt ſon the king of England, and thoſe who roſe up againſt him his enemies, and thoſe who died in his cauſe at Northampton faithful; he diſapproves alſo the temerity of that moſt atrocious legate, as well for aſſiſtance and counſel which he furniſhed to the king's enemies as for raiſing the ſtandard of the church againſt him and the army of his faithful, and contrary to the will of the ſame moſt holy Pope, as he himſelf writes to the king's highneſs, abuſing the power committed to him by unjuſtly promulgating ſentence of excommunication againſt thoſe who were faithful to the ſame king's highneſs, and forbidding due burial to the king's faithful fighting in juſt cauſe, and while ſo fighting dying valiantly. Moreover, the Pope promiſes in the ſame letter to the king, as ſoon as it ſhall happen that that moſt wicked legate ſhall be recalled, ſo to

correct and punish him according to his demerits, and according to the demands of his offences, that he shall be an example for the future to others, lest so hereafter against the rights and the will of the supreme Pontiff, whether his own or of his successor in the same apostolic see, any in like manner abuse the power of Peter. Also the most holy pope counsels, and under apostolic benediction enjoins on the same our most Christian King Henry to contend manfully for his right, not secluding from him the benefit of his right, that is to say, that all Englishmen and others lawfully subject to his rule bearing arms against him, rising up against him, and rebelling, should be, until they shall have returned to their true obedience, held as excommunicated. Also, that the most Christian and most pious soldier of Christ our King Henry has reigned by one God from whom is all power in heaven and in earth both accepting and approving his reigning appears from these things which follow:—First, that when there was lacking to him all pleasure of ruling, all desire of reigning, and all power of desiring the same, in the first year of his age, God had set him most graciously on the throne of his father and grandfather; whom after the seventh year of his age, with the consent of all the people, He ordained to be solemnly crowned and anointed, not with common holy oil, but with oil fore-ordained by the Lord to anoint him therewith, which his kind patroness the most blessed Virgin Mary delivered to Saint Thomas Archbishop of Canterbury in the phial, which even till now is most carefully preserved in the keeping of the same most Christian King Henry, saying to him: "The Kings of England who shall be anointed with this oil shall be gentle and champions of the church;" by virtue of which unction due to him through the touch of his most pure hands uncontaminated by any stain, such as the blood of homicide or the hunger of luxury, those sick of the king's evil of whom physicians have despaired do even to this day receive by the gift of the Lord the desired health, to the praise of Almighty God, of whose grace comes the grace of healings, to the strengthening in fidelity to the king of all who behold and assist, and to the confirmation by the Lord's approval of his most undoubted title. But if it be objected that such virtue in the healing of those sick of the said disease, since it follows the royal anointing of the hands, accompanied as regularly the touch of the hands of Edward as that of our most Christian King Henry; whence, because such curing of the sick with consecrated oil regularly works such works of healing, it will approve the title of either, or of none of them: in answer to this it is said, that our one God works not such works of healing regularly by any mortal man who is anointed with such consecrated oil, as being by such holy unction ordained to be the Lord's Christ or the Lord's anointed, which none is except he who is duly, regularly and lawfully anointed. That this may be clearly understood, it must be remarked that, as in the sacramental anointing of any one in his ordination to be a priest anointed of the Lord, among other things three are required of necessity, that is to say, a due minister, that is, the bishop with intention; a due form of ordination and unction; and due matter, that is, a person fit to receive such order and unction; (on account of the lack of the third of which, a woman is

neither made, by one believing her to be a man, a prieſt by reaſon of the anointing which ſhe has received from the biſhop, nor confirmed as a Chriſt of the Lord or the Lord's anointed;) ſo in the royal unction is required of neceſſity, among other things, a perſon due and fit of right to receive duly ſuch benediction and unction; that is to ſay, ſuch a man as has among other things a juſt title to the crown which he receives or to the kingdom over which he is anointed, that is, a liege people duly, lawfully, and of right ſubjected to him; which Edward has not in the kingdom of England, ſince he himſelf and all the inhabitants of the kingdom of England have been and are ſtill ſubject to our moſt Chriſtian King Henry; from which ſubjection or due ſervice they cannot revolt or be abſolved on their own authority or on that of all thoſe together who are ſo ſubjected to him by any means. For if ſuch unction and coronation by the Biſhop of Canterbury ſufficed to ordain any one to be a king anointed of the Lord, or the Lord's Chriſt, then he, at the clamour of inſurgents in Kent, might at will ordain one other for them as king, even ordain at their pleaſure as many and as great anointeds of the Lord, or Chriſts of the Lord; which is ridiculous. It remains therefore that, for the lack of a due title to the crown of England, Edward now uſurping will be in no wiſe by that unction and coronation ordained to be anointed of the Lord or a Chriſt of the Lord.

Cap. XI.

Argument ſhowing that it cannot be truly ſaid that Edward is choſen by the Lord to be King of England by a private and ſecret diſpoſition of the Lord.

BESIDES by no one is it doubted that ſuch a king reigns duly by God, who according to the law or laudable cuſtom of his kingdom, the law of God or of the church not oppoſing, is duly anointed, crowned, and holds the ſceptre of ſuch kingdom. This is manifeſt; for, in the law of Chriſt the Lord is not wont to aſſign any one's kingdom regularly in any other way: and therefore as after the Lord in the Old Teſtament by a law publiſhed immediately by himſelf formed the kingdom of Judah in the hand of David, entitling the kingdom to him and his lawful ſons, ſaying, "Of the fruit of thy body will I ſet upon thy ſeat," it was not allowed to the people of Judah, on account of any fault of the ſons of David, to transfer the kingdom of Judah from his ſeed to ſtrange blood; ſo neither is it allowed to the inhabitants of England or of any other kingdom to transfer the kingdom thereof from the incumbent for the time reigning according to the law, or laudable cuſtom of ſuch kingdom, to another perſon, and chiefly on pretext of a private diſpoſition or election by God of another perſon, provided ſuch election or diſpoſition by God does not make itſelf known openly by manifeſt, certain, and authentic revelation. The force of this reaſon lies in this, that the law or laudable cuſtom of any kingdom not contravening the law of God or the Church, is a law publiſhed

mediately by the Lord and approved, which, by thoſe who have from Him power to make law, is made and approved. It is clear by both arguments that there is no parallel between our moſt Chriſtian King Henry and the uſurper Edward on the one ſide, and the holy man David and Saul on the other: firſt becauſe the kingdom of Judah was never confirmed by any law to Saul and his lawful ſons, nor did he obtain the kingdom of Judah by hereditary right as our moſt Chriſtian King Henry obtained the kingdom of England by hereditary title: ſecondly, becauſe when Saul for his ſins was rejected the virtuous David was promoted to the kingdom of the Jews; whereas ſuch compariſon would be tranſverſe between the moſt Chriſtian King Henry, pious, continent, and honeſtly living, and Edward the uſurper of the kingdom of England.

Cap. XII.

Incidental argument ſhowing the enormous offence of the inhabitants of England who aſſiſted the uſurper Edward.

MOREOVER, even if this Edward had wiſhed to riſe up on his juſt title, as he ſays, againſt his king that he might caſt him down and turn him out of his kingdom;—then all the liege men ſubject of right to King Henry riſing up with Edward contrary to their fealty to the king had offended inexcuſably againſt the Lord, and their king himſelf. For in the caſe that our moſt Chriſtian King Henry had held the ſceptre of the kingdom unrighteouſly, as he has held it moſt righteouſly, he alone would have ſinned in this, and all his liege men fighting for him according to the fealty by which they were bound to him, that they ſhould defend their lord againſt his enemies, would have fought virtuouſly and laudably, and would have contended meritoriouſly, as it is taken by Auguſtine againſt the Manichees, and inſerted in the Canon XXIII.; Queſtion I. "*Quid culpatur in bello.*"

Cap. XIII.

Argument founded upon that principle of law that by renunciation and contrary act lapſe of right is made.

MOREOVER after the death of Roger Earl of March, from whom the aforeſaid intruding Edward pretends his title, Edmund his ſon who ſucceeded him in the earldom of March, in the chancery of King Henry V., as the cuſtom is of heirs after the death of their predeceſſors, ſued out and prayed livery and poſſeſſion of the earldom of March, and ſo received his lands from the hands of the king as from his true natural king and chief lord;—and for them as ſon and heir of the ſaid Earl Roger did liege homage and

fealty to Henry V., and by word and deed confeſſed, recogniſed, and approved the ſaid Henry for his true, righteous and natural lord. And afterwards in certain indentures conſigned as well with the ſeal of arms as with the ſign manual of the ſaid Edmund, by which he was retained as a paid ſoldier with the aforeſaid King Henry V. in his war in his Duchy of Normandy, he named, affirmed, and recogniſed him to be King of England, and his ſupreme and liege lord, and remained during his life his liege and faithful ſubject. And the ſame Edmund Earl of March after the death of Henry V. did like liege homage and fealty to Henry VI. in his moſt tender age, as to his king and the true heir of Henry V. Which Edmund alſo dying without children, the earldom of March came down by hereditary right to Richard father of the intruder Edward, who in all reſpects did, for the ſame poſſeſſion and delivery of the ſame earldom, fulfil, as Edmund had before done, what was of right by cuſtom of the Court of Chancery. Which Richard alſo having been made lieutenant of Henry VI. firſt in France and afterwards in Ireland, did, by his writs indented and ſealed with his ſeal of arms and ſubſcribed by his own hand, promiſe to the ſame king faithfully, according to the form and effect of the agreement, to ſerve him as his ſubject and true liegeman; and in both writings named him, by word and deed recogniſed and approved him as his ſupreme and chief lord and King of England.

Moreover, the ſame Richard in the time of a certain ſickneſs of Henry VI. himſelf being ordained by the authority of Parliament Protector of England during the king's ſickneſs, did, by his writings in that very parliament and after it, frequently recogniſe, confeſs, and as well in writing as by word and deed approve him for his true chief and ſupreme lord and his king.

Cap. XIV.

Argument proving that by abjuration he was excluded from his right, if he could have had any.

ALSO, Richard, father of Edward the uſurper, oftentimes ſwore on the holy Goſpels of God and upon the Lord's Body ſeen and taken, that he would always be a faithful liegeman of Henry VI., King of England, and that always to the beſt of his ability he would aid him in all things which pertain to the honour and glory of the dignity and right and name royal; in which oath is contained an expreſs abjuration of the contrary, and an excluſion of the pretended right to the crown. A like oath the intruder Edward took in the preſence of the Archbiſhop of Canterbury, and of the clergy then convoked to the church of S. Paul London. For he took a corporal oath, touching the croſs of Canterbury, that he would honour our moſt Chriſtian King Henry as his king, and would obey him as his true chief, liege, and ſupreme lord during the life of the aforeſaid King Henry and his own, and would defend him as his true king againſt all men living: and in the parliament held at Weſtminſter he promiſed to obſerve the ſame, and bound himſelf

of his own accord, beſides oaths at ſeveral times taken on the occaſions of his creation as knight and afterwards as Earl of March, on which occaſions, as is the cuſtom, he ſwore concerning the keeping of fealty to our king Henry, and defending him againſt all oppoſed to him.

By theſe arguments and reaſons inſoluble as the earth, militating chiefly againſt the pretenſion of the uſurper Edward, as well as by the removal of objections, it is inferred that our moſt dread King Henry VI. by a juſt, clear, and undoubted title, is the true and right King of England, and ought to reign over the Engliſh by every right natural, divine, and human; and that to the ſaid uſurper Edward or his progenitors no right to the crown of England has belonged or ought to belong; to the wider declaring whereof, and chiefly to the moſt eſpecial declaring of the undoubted title of our King Henry to the crown of England, there are not wanting reaſons moſt ſtrongly grounded upon right divine and human, which, the Lord willing, at the beſt hour in which all the adverſaries of our king will not be able to reſiſt him will become clearly known; with the true letter apoſtolic ſpeaking more fully of the aforeſaid ſent by the preſent Pope Pius into Scotland to our moſt Chriſtian King Henry; and with a true copy or tranſcript of the bulls ſent to Lewis the king's couſin in France lately anointed, in which he exhorts him, under the bleſſing of Almighty God, by papal authority to the help of the moſt Chriſtian King Henry, to the overthrow and final confuſion of his enemies, and to the laſting continuance of himſelf on the throne of his father, to the honour of our Lord Jeſus Chriſt, to whom be honour and glory for ever and ever. Amen.

It is to be remembered that Henry IV. was the neareſt male heir on his father's ſide to Henry III. ſometime King of England; that is to ſay, he was the ſon of John, ſon of King Edward, ſon of Edward, ſon of Edward ſon of the aforeſaid King Henry III. And the ſame Henry IV. was, on his mother's ſide, neareſt of blood to the ſame Henry III., that is to ſay, he was ſon of Blanche, daughter of Henry, ſon of Edmund vulgarly called Edmund Crookback, ſon of the afore-named Henry III.; ſo by that line the aforeſaid Henry IV. could by no means have been King of England, becauſe that kingdom is heritable by male heirs, deſcending through males, as is above noted, and was inherited by ſuch heirs from all time, and not by others: and, moreover, the ſame Henry IV. ſometime King of England was neareſt male heir to Richard II. ſometime King of England, and the neareſt to him in line of conſanguinity among all men then living; for he was the ſon of the uncle of King Richard, that is, ſon of John brother of Edward father of the aforeſaid King Richard. For although it ſo be, that before theſe times there were taken for kings of Scotland certain of the royal ſtock of Scotland, deſcending therefrom through a woman or through women; for example, when the line of the males deſcending lineally from Malcolm was determined, Balliol, who deſcended from the elder daughter of David ſon of Henry ſon of David Canmor once King of Scotland, was taken and crowned King of Scotland; and in like

manner after him another, namely, Stewart, who deſcended from the aforeſaid Bruce by a woman daughter of the ſaid Bruce, when to him in like manner failed male heir deſcending lineally from him, obtained the ſupreme kingdom of the Scots; yet never, whilſt any male whatſoever was alive deſcending lineally from the ſtock of the king by the male ſex, has any one deſcending by a woman been taken for king, reigning peaceably; nor would it have been fitting to be ſo; for if it were ſo, any perſon, vile by race, and of the loweſt degree in virtue, ignoble on the father's ſide might be [raiſed] to be king whilſt there was living a male heir deſcending from that noble royal origin who had preſerved in himſelf the noble precedence of kings, their blood and name together, which would appear abſurd and far alien from right reaſon. In chronicles therefore it is very ſeldom found that the noble ſucceſſion of male heirs lineally deſcending through the male ſex being contemned, a ſucceſſion of women has reigned. Moreover, although it be ſo according to the civil laws which hold that the inheritance of a dead father ſhould be divided among his ſons according to equal portions: nevertheleſs, according to the ſame laws, the right of the kingdom (or) its royalties belong to the elder ſon; whence it appears that the rights are not ſimilar in the caſe of the royalty and private poſſeſſion, &c.

THE END.

OPUSCULUM

DE NATURA LEGIS NATURÆ,

ET

DE EJUS CENSURA IN SUCCESSIONE REGNORUM SUPREMA.

BY

SIR JOHN FORTESCUE, KNIGHT,

LORD CHANCELLOR TO KING HENRY THE SIXTH.

EDITED, AND TRANSLATED INTO ENGLISH,

BY THE RIGHT HONOURABLE CHICHESTER FORTESCUE, M.P.

LATE STUDENT OF CHRIST CHURCH.

THIS work is referred to by Sir John Forteſcue in his later treatiſe, "De Laudibus Legum Angliæ," where the reader learns that it was drawn up for the uſe of the Prince of Wales, in addreſſing whom the author calls it "Opuſculum quod Tui contemplatione de Naturâ Legis Naturæ exaravi." Theſe expreſſions cannot mean more than that he put the treatiſe into its preſent ſhape for his Royal pupil, for there is no doubt that much of it, at all events, was written in Scotland, and formed part of thoſe "writings ſent out of Scotland againſt King Edward's title," which he was afterwards forced to retract. Forteſcue preſented it to the young Prince during their exile together in France for his peruſal and ſtudy. Although much eſteemed by its author, there is ſo much pedantry in the ſtyle, and ſo little general intereſt in the ſubject, that it has never before been printed, and, with a very different fate from that of his famous Tract on the Laws of England, has been long ſince forgotten. There is a copy of the firſt part among the Laud MSS. in the Bodleian Library, and a copy of the whole in the Lambeth Library, from which this printed text is taken. The handwriting and the ſtyle of the ornamental initials in the Lambeth MS. are not earlier than the beginning of the ſixteenth century. Bale, in a liſt of the Chancellor's works, dated 1557, calls it "De Vigore Legis Naturalis," and mentions one Book only; in which he is followed by Pitts, in 1619. The Lambeth volume alone contains both Books or Parts. It may have been that, after the fall of Henry, the poſſeſſion of a writing to prove that the crown of England could not deſcend through a female was attended with ſome danger to a ſubject of Edward the Fourth, and that thus moſt of the copies were deſtroyed. The Engliſh tranſlation by the Right Honourable Chicheſter Forteſcue is a valuable contribution to this edition of the writings of his anceſtor, and will enable all who deſire it to make themſelves acquainted with his ſtyle and manner of argument. We muſt remember, however, what he has himſelf told us, that, in the Second Part at leaſt, he writes not as a "Judge, but as a partial Man," pleading for the cauſe of Henry the Sixth, "in whoſe favour he made the arguments." [C.]

HIC SEQUITUR MEMORATIVUM QUODDAM DE CONTENTIS IN SUBSEQUENTI LIBELLO.[1]

LIBELLUS iſte dividitur in Partes duas, in quarum Primâ proponitur queſtio de jure ſuccedendi in ſuppremis regnis: et oſtenditur queſtionem illam non aliâ lege poſſe obſolvi humanâ, quam ſolum Lege Naturæ.

Deinde quæ ſit Lex illa Naturæ Tractans ſcrutatur, et comperit eam nedum ex ſacris Canonibus, ſed et in Evangelio demonſtratam.

Invenit etiam temporis longivitatem quo in temporalibus ſolum lege illâ mundus regebatur, legibus conſuetudinis et conſtitutionis nondum partis, neque lege Moyſaicâ adhuc promulgatâ. Hæc uſque capitulum XI.

Et dicit quòd ſacri Canones dicunt Legem Naturæ legem eſſe Divinam, et quòd illa ab exordio humanæ naturæ originem ſumpſit, et immutabilis perſeverat, et quòd legi illi omnes aliæ leges famulantur humanæ, ac quod ſub ipſâ et per ipſam primo erupit Dignitas Regia per eandem ſemper regulata.

Et tunc oſtendit quis fuerat Rex primus: quem et alios quamplures reges, quod ipſe recitat, quorum aliqui juſti erant, aliqui injuſti, ipſe probat ſub lege et per legem naturæ regnaſſe.

Tunc Tractans opponit erga Legis Naturæ preſtanciam per Jus Regis quod propheta Samuel Dei mandato predixit populo Iſraeli: et contra Regiæ Dignitatis bonitatem ipſe objicit populi illius penitentiam, cum ipſi dixerint, "addidimus univerſis peccatis noſtris malum, petendo ſuper nos regem."

Et in diſentiendo objectiones has, ipſe incidenter tractat de principatu politico et regali, ac de principatu tantum regali.

In quo tractatu ipſe probat eorum neutrum eſſe altero potenciorem, ſed licet ipſi ſub bonis principibus ſint equales, dicit tamen ſub iniquis principibus principatum politicum et regalem minus poſſe ledere ſubditos ſuos: et in hoc conflictu inter cetera ipſe probat legem naturæ formaſſe contractus hominum et regna ſtatuiſſe in terrâ, diu antequam Jus Gentium incepit: et probat quòd licet hominis ſtatus fuerat per peccatum mutatus, Lex tamen ipſa Naturæ ſemper eadem perſeveravit, et adhuc perſeverat, licet alterius graciâ, et cetera. Hæc deinde uſque ad Capitulum tricesimum.

[1] Biblioth. Lamb. MS. 262, f. 1.

Deinde ipſe ponit differenciam inter *jus* et *legem*: et tunc diffinit Legem Naturæ: et non modico proceſſu oſtendit quandoque qualiter ipſa ſumpſit originem et nomen ſuum. Ac poſtea dicit quòd lex naturæ et juſticia naturalis ſunt unius eſſentiæ, licet accidentalis, et inter cetera quòd lex illa eſt a juſticiâ, ut ſplendor a lumine, ardor ab igne, et plures tales ponit ſimilitudines: et oſtendit quomodo juſticia remanſit in homine poſtquam homo eam deſeruit.

Tunc hæc uſque capitulum quadrigeſimum quartum.

Et deinde oſtendit qualiter hæc juſticia differt a juſticiâ originali, ac dicit quòd non erant duæ juſticiæ creatæ, ſed ſolum una.

Et tunc oſtendit quare Lex Naturæ dicitur Divina, etiam quare ipſa dicitur filia legis Divinæ: et inter alia dicit quòd lex illa ſe habet ad legem eternam, ut luna ad ſolem, quæ non niſi ab eo habet lumen ſuum. Et preterea dicit, quòd qui a mundo legem tollit humanam quaſi cœlum privat ornatu lunæ et ſiderum; alia quoque quamplurima non minus hiis nebuloſa ipſe detegit, quæ legenti relinquimus.

Demum oſtendit qui ſunt fines legis Divinæ, et legis humanæ, et quali ſubjectione lex humana legi Divinæ ſubditur, et probat auctoritate ſacrâ, quòd omne ambiguum in curiis hominum referri debet ad judicium Summi Pontificis. Et finaliter dicit quòd lex naturæ deſtituta originalis juſticiæ preſidio nunquam ſufficiebat, nec jam ſine gratiâ ſufficit, juſtificare hominem aut actus ejus, ut meritis legis illius ipſe mereri poſſit vitam eternam. Alia quoque quamplurima in hâc Parte Primâ panduntur, quæ legis naturæ revelant ſacramenta et Partem hanc perlegenti illa patebunt; quare Tractans hanc Partem nominari volvit, *Tractatum de naturâ Legis Naturæ.*

Et ex tunc iſta uſque ad finem.

In Secundâ Parte hujus libelli Tractans primo conſtituit Judicem in cauſâ propoſitæ queſtionis, coram quo queſtio illa per competitores tres de regno quodam ſuperius nominate contendentes diſputatur rationibus a legis naturæ ſinu prefluentibus, licet tantum ipſas rectas eſſe Tractans nonnullis auctoritatibus aliis oſtenderit quibus rationibus probatur quòd mulier non eſt capax regni quod petitur, aut cujuſvis conſimilis. Et tunc probat Tractans concluſionem iſtam eſſe rectam, nedum lege Divinâ ſed et Canonicâ et Civili; conſimiliter quoque probat prolem regno tali potiri non poſſe matris titulo aut ratione deſcenſus per eam. Quare Filia regis qui de regno predicto obiit ſeiſitus, ſimiliter et Nepos ex eâ, duo de contendentibus predictis, per judicium Judicis ſupradicti a petito regno excluduntur, et regnum illud Fratri Regis illius diffinitivâ ſententiâ judicatur.

Summa partis ſecundæ.

Demum oſtenditur quare contra hujus ſententiæ effectum conſuetudo aut preſcriptio vim ſeu locum habere non poſſunt.

Hanc Partem Secundam vult idem Tractans, *Tractatum de jure ſuccedendi in Suppremis Regnis* nominari: in quâ Parte reperiet lector, ſi moroſe eam perlegerit, non pauca quæ ante ejus editionem pluribus tenebroſâ quâdam caligine celabantur.

OPUSCULUM DE NATURA LEGIS NATURÆ ET DE EJUS CENSURA IN SUCCESSIONE REGNORUM SUPPREMA.

Pars Prima,

VIDELICET DE NATURA LEGIS NATURÆ.

REX Superiorem in temporalibus non recognoſcens, Filiam habet et Fratrem: Filia filium peperit: Rex moritur orbatus filiis: Queritur an ad Filiam, filiæve Filium, ſeu ad Regis Fratrem deſcendet regnum regis ſic defuncti. Queſtio.

Cap. I.

Hic oſtendit Tractans cauſam ſui operis.

HÆC queſtio, licet verbis paucis proponatur, ſermone non minimo creditur poſſe abſolvi: cum de jure interroget ſummi culminis, ſummæ potenciæ, et rei quam maxime in terris deſiderat mens humana, dicente Philoſopho, "Omnia amamus, ſed principari magis." Celſitudinem concupivit Angelus, concupivit et hominum prothoplaſtus, quo ipſe dominandi libidinem ita in omnem ejus progeniem diffudit, ut vix reperiri poterit quem dignitatis ambitio non infecit. O quam pium igitur et quam ſanctum foret veritatem quæ jam queritur, ab omni erroris velamine exutam nudam et nitidam revelare, cum ſub ejus ignorantiæ nebulis tot guerrarum diſcrimina, tot bella civilia, toti mundo pervulgata, nedum in nobiliſſimis Franciæ et Angliæ regnis invaluere, ſed et in quam plurimis aliis regionibus cruentus gladius, hujus ſolum veritatis juſticia comitatus, milia milium hominum devoravit! Veritas igitur hæc, ſi indubitata diffinitione reveletur, guerras Deo duce non paucas ſedabit jam inceptas, et materiam ſubtrahet ad conſimiles deinceps inchoandas, quo pax fiet firmior inter regna, et robur Eccleſiæ, guerrarum hujuſmodi actione diutiſſime tenuatum, ſolito plus convaleſcens, ejuſdem inimicos fortius propugnabit. Quare licet hujus veritatis indagatio menſurari non valeat ſcientia queſtionem prælibatam proponentis, ipſe tamen tanti boni deſiderio accenſus recolens moraliſſimi Senecæ ſententiam inquientis, "nichil in mundo vidi mirabile præter animum cui magno nichil magnum," Dei adjutorio confiſus, cujus gratia in neceſſariis nulli defuit humiliter implorata, opus hoc licet grande forma aggreditur ſubſequenti.

Cap. II.

Licet juris ſit quod queritur Tractans non recuſat ſubſidia aliarum facultatum.

CUM juris tantum ſit quod ſupra queritur, ſolutio ejus plurium difficilium ve ſcientiarum ſententias non exigit ; ſolæ leges ſunt quæ eam poterunt diffinire. Quis egrotus medelam querens mathematicos conſulit, cum phiſica tantum ſit quæ novit curare langores ? aut yconomus quiſpiam terram ſerere cupiens, philoſophorum judicium expectat ? mechanica enim eum ſatis inde novit erudire. Tametſi naturalis philoſophia feminis et colendæ terræ naturam ſubtilius inveſtigat quam ars coloni, et aſtronomus certius novit medico planetarum curſus ſub quibus eger ledi poterit aut curari : horum igitur ope eger et mechanicus certius, ſi conſulant, perficere poterunt ea quæ intendunt. Sic et leges quibus ſolis caſus noſtri cura relinquitur, ſi aliarum ſcientiarum auxiliis fuerint ſuffultæ, certius hanc litem diſcutere et ampliore auctoritate poterunt ; cum nullæ facultates ſint quæ non alii artibus alicubi ſuffragentur. Et ideo legum in hac diſputatione ſic queramus cenſuram, u in eadem aliarum non recuſemus amminicula facultatum : et quæ lex eam ſufficiat dirimer primitus perſcrutemur.

Cap. III.

Hujus queſtionis ſolutio legem aliam quam Canonicam aut Civilem exigit.

QUAMQUAM leges imperiales quæ Imperatorum ſubditos fortiſſime ligant cauſa hujus merita claris ac perſpicuis rationibus detegere valeant et illuſtrare, eam en tamen abſolute ſua non videntur poſſe auctoritate diffinire : cum de regno partes contendant quod Cæſaris ditioni minime ſubjugatur. Sacri quoque Canones quamvis ſententiis quæ cauſæ hujus merita referare poterint uberrime ſint referti, quia tamen Chriſti Sponſa Eccleſia ad celeſtia reſpiciens circa ea quæ altioris indaginis ſunt, ſpiritualibus videlicet, intenta, matriffamilias more domeſtica curantis forinſecis ſe non aſſolet implicare, hujus terreſtris negotii diſcuſſioni non hucuſque inſudavit : alterius igitur legis decretum in hac re percunctari compellimur : ad quod faciendum hunc qui ſequitur eligimus procedendi modum.

Cap. IV.

Lex Naturæ ſola rexit orbem uſque legem datam per manum Moyſis.

HUMANUM genus a tempore quo a Paradiſo migravit uſque dum populus Iſrael ad montem Synay legem ſcriptam a Domino per manum Moyſis recepit, Lege Naturæ regebatur : quo tempore pluſquam tria millia ſexcenti et quadraginta quatuor anni elapſi ſunt : ut ex ſcriptis Sancti Auguſtini (Libro 15 et 16 De Civitate Dei)

colligi poteſt, et conſimiliter fere numerat Joſephus in libro ſuo De Antiquitatum Hiſtoriis, cujus pretextu totum tempus illud tempus legis naturæ appellatur'. Et licet ſuccedens tempus uſque ad Chriſti adventum tempus legis datæ et totum abinde tempus uſque modo tempus gratiæ nominentur, Lex tamen ipſa Naturæ illis ſuccedentibus temporibus deleta non fuit, ſed totis temporibus illis permanſit, et adhuc permanet in ſuo robore et effectu. Eam quoque confirmavit Dominus et obſervari precepit dicens, "omnia quæcumque vultis ut faciant vobis homines et vos eadem facite illis, hæc eſt enim lex et prophetæ," (Mathei vij. C°.) Et legem quam ſic declaravit Dominus et cuſtodire precepit legem eſſe naturæ expreſſe declarant Canones (1 Di. C. 1) ſic dicentes, "Jus naturale eſt, quod in lege et Evangelio continetur, quo quiſque jubetur alio facere quod ſibi vult fieri, et prohibetur inferre quod ſibi nolit fieri." Nam licet hæc verba prohibitionis expreſſe in Evangelio non dicantur, illa tamen ibidem tacite comprehenduntur, cum juſſo uno contrariorum alterum prohiberi neceſſe ſit: nec mirum ſi hæc lex licet civiliter mundum regere potuit, tam paucis verbis in Evangelio explicetur, cum in duobus mandatis maximis paucis etiam verbis recitatis dicat Dominus pendere legem totam et prophetas: et paucioribus verbis omnia hæc complectens Apoſtolus dicat, dilectionem eſſe plenitudinem legis.

Cap. V.

Lex Naturæ excellit omnes alias leges humanas.

HANC naturæ legem omnes leges Veteris et Novi Teſtamenti approbaverunt eam in nullo minuentes, dicente de ea Domino, ut de reliqua lege ſua, "non veni ſolvere legem ſed adimplere." Et ſi quæ leges aliæ ſint quæ humanæ dicuntur eas hæc lex ſtatuit aut ejus autoritate illæ ſubſiſtunt eidem ſubrogatæ. Nam leges ab homine editæ aut conſuetudines omnes ſunt vel ſtatuta, uti tota illa legum turba quæ in Imperatorum legibus diverſis tot nominibus recitantur; ut ſunt, principum placita, ſenatus conſulta, plebiſcita, et conſimiles leges Quiritum, militum, navalium, et commerciorum et hujuſmodi: cum omnia jura hæc conſuetudo peperit vel hominis conſtitutio, de quarum preſtantia et de legis hujus dignitate ſancti Canones nos erudiunt ſub hiis verbis: "Dignitate vero jus naturæ prevalet conſuetudini et conſtitutioni. Quæcumque enim vel moribus ſcripta ſunt, vel ſcriptis comprehenſa, ſi naturali juri fuerint adverſa, vana et irrita ſunt habenda" (viii. Di. C°. *Quo Jure*, in fine). Et eidem ſententiæ militant nedum tota illa Diſtinctio, ſed et tota ſubſequens Diſtinctio, videlicet Diſtinctio nona. De hac etiam lege ſic habetur (v. Di. C°. primo). "Nunc ad differentiam naturalis juris et ceterorum revertamur. Naturale jus inter omnia prima uni optinet tempore et dignitate. Cepit enim ab exordio rationalis creaturæ, nec variatur tempore ſed immutabile permanet," cui textui applaudens Gloſa inquit; "ſi quid juri naturali contrarium fuerit, iniquum illud eſt, cum contra jus naturæ nulla ſit diſpenſatio," ſubjungens quod jus illud naturalis equitas eſt. Huic juri naturæ ancillant cunctæ leges imperiales quæ vulgato nomine

civiles appellantur, et omnia jura regum quoque, ſi ultra conſtitutiones et conſuetudines, quæ ut oſtenditur huic juri ſubduntur, aliquid comprehendant, hoc non a principis auctoritate, ſed hujus legis tantum vigore quæ ſe omnibus mundi poteſtatibus exhibet communem, quaſi ex mutuo receperunt. O quam magna et omni laude extollenda eſt iſta Lex Naturæ cui obediunt aliæ humanæ leges univerſæ, quam et Canones nedum ut predicitur extollentes dicunt etiam legem eſſe divinam (Di. I. Cap. i. *Omnes*)! Et vere divina ipſa eſt: nam (ut dicit Sanctus Thomas in Primâ Secund. Quæſtione lxxxxvi. Articulo ij°.) ipſa nichil aliud eſt quam participatio legis eternæ in rationali creatura; ſub ea poteſtas regia ſumpſit exordium, ejus quoque auctoritate et vigore regnaverunt et regnant omnes reges juſti. Tamen ne Scriptor ſentiatur verbis ſterilem fecundare velle, quis juſtorum regum ſub ſola lege naturæ regnavit, etiam quis primo regale faſtigium potitus eſt expedit explicare; cum fidem non minimam experientia prebeat argumentis, dicente Varrone, "excellens eſt quoddam docendi genus rei quam dicturus es exemplorum ſubditio." Si unum namque genuerit lex naturæ regem juſtum, etiam plures ipſam generare potuiſſe non ambigitur, et non poteſt arbor mala fructus bonos facere; quare ex fructibus legis hujus eam plenius agnoſcemus, dicente Domino, "ex fructibus eorum cognoſcetis eos." Etiam ſi primogenitus regum ſeſe filium legis hujus eſſe fateatur, poſtnatos fratres ſuos reges hujus legis eſſe filios ipſe tunc oſtendet, aut recte dicet eos ſibi veros non eſſe germanos; quare quid de his doceat Scriptura Sacra aut doctores ſanct jam congruit ut ſcrutemur.

Cap. VI.

Melchiſadech ſub ſola Lege Naturæ factus eſt Rex.

TEMPORE Abrahæ patriarchæ quo tertia mundi ætas extitit inchoata Pharaonem regem fuiſſe Egipti, Abimileth regem Geraris in Paleſtina, alios etiam quamplures reges fuiſſe habentes diſtincta regna, ut moderni habent reges, Geneſis liber copioſe nos informat; ubi quartodecimo ejuſdem C°. legitur quod poſtquam ipſe Abraham a conflictu quo ipſe quatuor reges vicerat, qui antea quinque reges Sodomorum et aliorum locorum vicerunt, regreſſus eſt uſque in vallem Salem quæ eſt vallis regis, occurrit ei rex Salem de quo ibidem ſic ſcribitur. "At vero Melchiſedech rex Salem proferens panem et vinum, erat enim Sacerdos Dei Altiſſimi, benedixit ei et ait, Benedictus Abraham Deo excelſo qui creavit cœlum et terram, et benedictus Deus excelſus quo protegente hoſtes in manibus tuis ſunt, et dedit ei decimas ex omnibus." Civitas Salem poſtea dicta et Jeruſalem, et vallis predicta via fuit ad Jeruſalem, ut dicit Joſephus in primo libro Antiquitatum. Hæc omnia facta et dicta fuiſſe tempore quo ſub lege naturæ regebatur genus humanum non ambigitur. O quot ſacris cariſmatibus et noſtræ religionis rudimentis fecunda ſunt hæc verba Geneſis! Non contenta eſt Sacra Hiſtoria virum hunc juſtum ſolo Regis nomine honorare, ſed ad majorem ſuæ eminentiæ venuſtatem et gloriam eum etiam pandit ſacerdotalis culminis

dignitate fulgere Sacerdotem eundem Altiſſimi nominando. O quale majoris ſacramenti eſt hic ſacramentum, cum panem et vinum victori offerat Dei ſacerdos, honore regis redimitus adhuc ſub lege naturæ degens! Quis iſto homine fidelior, juſtior aut ſanctior potuit reperiri, qui Deum ſola lege naturæ eruditus, quam ſine gratia nequaquam dereliquit Altiſſimus, confitebatur Creatorem eſſe cœli et terræ, et ſic humanos regere actus ut non niſi ejus gratia belli agibilium maximi victoria proveniret? Nonne hic meruit ut patriarcha magnus decimas ſibi dando non magis figuraret quum initiaret decimas ſacerdotibus et potius Deo tanquam juge ſacrificium ab hominibus debere offerri, quod et promiſit ejus nepos patriarcha Jacob ſe facturum de omnibus quæ dederit ſibi Deus (Geneſis xxviij°. C°.)? Sed hæc non niſi in valle Salæ quæ via eſt ad Jeruſalem, ubi poſtea vera ſacramenta non ſub figura ſed realiter in tempore legis gratiæ effluxerunt. Num jam invenimus regem juſte ſub lege naturæ regnantem, cujus imperium non alia lex humana, cum tunc nec ulla fuerit, præterquam lex naturæ conſtituit, quem et ſacerdotem Domini fuiſſe non hic ſolum affirmat Scriptura, ſed et juſte eum illo fungi officio propheta comprobavit, cum de Chriſto dixerit "Tu es ſacerdos in eternum ſecundum ordinem Melchiſadech"? Non enim dixit ſecundum ordinem Aaron qui Summus Sacerdos tempore legis datæ conſtitutus fuerat, ſed ſecundum ordinem Melchiſedech, qui tempore legis naturæ ſacerdos eſt effectus. Ecce quantâ ex hoc laude extollitur lex naturæ! Unde poſtmodum mos inolevit homines juſtos *ſacerdos* vocare; quare et Jethro cognatus Moyſy ſacerdos Madian eſt dictus, (Exod. xviij°. C°.) et leges civiles jus diffinientes dicunt quod illud eſt "ars boni et æqui cujus merito quis nos ſacerdotes appellat." Jam, ni fallor, liquide monſtratum eſt naturæ legem regem juſtum juſte conſtituiſſe, quam divina gratia non dimiſit inanem; quo ejuſdem legis vires recte ſumus experti, nec quin de cetero conſimiliter facere poſſit, ſi ſibi homines acquieſcere velint, poterimus heſitare, cum vim ejus perpetuam eſſe ſanxerint Canones prelibati; tamen quia ſuperius promiſimus percunctari quis primo ſub hac lege regnavit, quem Melchiſedech non fuiſſe putatur, obligatio promiſſi exigit ut quid inde dicat Scriptura certius perſcrutemur.

Cap. VII.

Nembroth primus habuit regnum et tamen non fuerat Rex.

ANTE predictos novem reges quorum quatuor quinque vicerunt Scripturæ Sacræ hiſtoria neminem nominat nomine Regis: ſcribitur tamen Geneſis x. C°. "ſic porro Chus genuit Nembroth, ipſe cepit eſſe potens in terra et erat robuſtus venator coram Domino;" et poſt pauca ſcribitur ſic, "fuit autem principium regni ejus Babilon Arach et Arrath et Calanne in terra Sennaar, de terra illa egreſſus eſt Aſſur et ædificavit Niniven et plateas civitatis etc." Ecce primum potentem invenimus et primum regnum, ſed nullum adhuc invenimus regnantem aut Regis nomine inſignitum, tamen regnum illud regnum ipſius

potentis fuit, cum dicat hæc Scriptura quod Babilon fuit principium regni ejus. Sed poſſeſſor hujus regni nomine Regis non erat dignus, cum *rex* a *regendo antonomatice* dicatur, et *regere* a *recto* exordium ceperit; per quod qui recte non regit nomen Regis juſte non fortitur, quamvis populum per potentiam opprimens regere videatur: ut Nembroth robuſtus qui venator erat coram Domino, ideſt oppreſſor et extinctor hominum (vj. Di. in fine) ſicut ſunt venatores ferarum extinctores et non rectores, quem Nembroth etiam gigantem Auguſtinus appellat xv. libro De Civitate Dei. Sed talis non niſi venator eſt coram Domino licet coram homine rex appareat qui opprimit et non regit. Sic et tyrannus, licet rex fuerit inſtitutus, poſtquam derelictâ regiminis curâ moribus Nembroth fuerit habituatus, nomen Regis exuit et nomen induit tunc Tyranni: quare populus ſæpe in talem inſurgens ſolet dicere ſe non regem, ſed in ſui defentionem occidiſſe tyrannum. Sic fecit Romanus populus occidendo Neronem: ſic et Senatus dixerat ſe juſte defendiſſe cum Domitianum extinxerat; quo Tullius in tertio libro De Officiis dicit, "occidere tyrannum ſcelus non eſſe populo Romano viſum eſt, qui ex omnibus preclaris factis illud pulcherimum exiſtimat." Tamen etſi horum et conſimilium mors mundo fuerat opportuna, nulli licuit hoc facere et maxime ſubditorum, quibus ſæpe eorum exigentibus meritis Dominus reges diſculos conſtituit, qui per prophetam Oſee dixerat "Dabo eis regem in furore meo," et Nabugodonoſor, qui populum Iſrael peccantem oppreſſerat, vocavit ſervum ſuum (Jerom xxv°. C°.); nec ſine judicio aliquem occidi permittit lex quæ generaliter dicit, non occides; caveat tamen tyrannus, cujus mors nedum bona eſt populo ſed et optabilis, ne ab illis occidatur, cum dicat Omerus, "dulciorem melle eſſe iram in vindictam," ſed magis pertimeſcat populus ne regem interimat licet tirannum. Nam quamvis nomine Regis ut Nembroth non ſit dignus, tamen ejus eſt regnum, ut Babilonicum quod Nembroth poſſedit dicebatur regnum ejus; et licet neceſſe ſit ut veniant ſcandala, væ tamen homini illi, inquit Evangelium, per quem ſcandalum venit. Profecto tamen recte intuentibus non minimum confert ad oppreſſorum patientiam hoc quod dicit Sanctus Thomas, "non ſolent tyrannorum dominia eſſe longæva;" unde Ariſtoteles in Policia ſua plures numerans tyrannos eorum omnium dominia demonſtrat fine brevi fuiſſe concluſa: quale et eidem applaudens gravis ac moralis ille Seneca ſub compendio aſſerit quod "procellæ quanto majoris vehementiæ tanto minoris ſunt temporis." Primum regnum jam reperimus et dominatorem ejus, ſed nondum invenimus quempiam qui primo regnum venit aut Rex primus fuerat appellatus, et cum ejus nomen Scriptura Sacra, quæ ejus regnum pandit, memorabile facere indignata ſit, creditur ejus mores non ut regnum ejus fuiſſe memoriâ dignos. Tamen quia quod nomen fuerat primi regis promiſimus indagare, cum illud Scriptura Sancta ſilentio præterivit, et dicat Diodorus Siculus in primo libro Priſcarum Hiſtoriarum quod hiſtorici aliqui illud non tradunt, hoc ab aliquo Sanctorum conabimur explorare.

Cap. VIII.

Belus fuit primus nominatus Rex et regnavit in Babilon metropoli Affiriorum.

SANCTUS AUGUSTINUS xvi. libro de Civitate Dei C°. xix°. ſic ait: "In Aſia prevaluerat dominatus impiæ civitatis cujus caput erat Babilon cui terrigimæ civitati nomen aptiſſimum eſt, ideſt confuſio. Ibi Ninus regnabat poſt mortem patris ſui Beli, qui primus illic regnaverat, ſeptuaginta quinque annos; filius vero ejus Ninus, qui defuncto patre ſucceſſit in regnum et quinquaginta duos regnavit annos, habebat in regno quadraginta et tres annos quando natus eſt Abraham, qui erat annus circiter milleſimus et ducenteſimus ante conditam Romam veluti alteram in occidente Babilonem." Ecce licet Nembroth primus fuit qui regnum poſſedit Babilonis, tamen dicit hæc ſcriptura quod Belus ibidem primus regnavit. Unde aliud eſt habere regnum ut habuit Nembroth primus tyrannorum, et aliud eſt regnare velut ut cumque fecerat Belus primus regum. Primum regem, licet non ita moribus pollentem ut ejus nomen memorabile facere Sacra Scriptura dignaretur, jam invenimus, Belum nomine, quem Vincentius in libro De Morali Inſtitutione Principum Belum Nembrothidem vocat, cujus filius Ninus civitatem Niniven condidit et ſuo nomine inſignivit, unde a Nino eſt Ninive appellata; licet liber Geneſis dicat quod de terra Sennaar exivit Aſſur et ædificavit Niniven; nam longo tempore poſt ejus primam conſtructionem Aſſur, qui erat de progenie Semi, poſſedit regnum Nembroth, qui erat de progenie Chami, et ædificavit ideſt amplificavit Niniven, et vocatum eſt regnum ejus regnum Affiriorum quod diu fuit maximum regnum mundi. Hæc Auguſt. Lib. xvi. De Civitate Dei, cap. iv.

Cap. IX.

Dubitatur an ante diluvium reges fuerant in Enoch quam ædificavit Cayn.

ANTE vero diluvium non legitur humanum genus regem aliquem habuiſſe: tamen Auguſtinus (xv. Li. de Ci. Dei c. xxv.) dicit quod poteſt eſſe quod Cayin et filii ejus qui nominantur in Geneſis (iv. 17.) fuerunt reges Enoch, non tamen eos ita fuiſſe de facto ipſe affirmat. Et ſi fuerint, et quamvis multi iniqui regnaverint in exordio regnorum, etſi eadem regna ipſi iniqui initiaverint, hoc non officit hiis quæ diximus, videlicet quod regna ſub lege naturæ juſte fuerunt inſtituta. Nam ipſe fratricida Cayin primus civitatem condidit: ſic et fratricida Romulus civitatem edidit Romanorum. Cayin etiam primus terram ferere docuit et filii ejus artem ferrariam, canendi organis et ædificandi domos primitus ſcientias invenerunt, et ut dicit Joſephus; Cayin primus fieri fecit pondera et menſuras et poſuit limites in terras. Et quamvis ipſe et filii ejus peſſimi fuerint, quid tamen accomodatius homini aut juſtius honeſtius ve fieri potuit quam ſunt ea quæ ab ipſis initium ſumpſerunt.

Nunquid medicinam refugimus quam nobis exhibet medicus ſceleratus, aut verum condemnamus quod predicat infidelis? Cayin et exitum ejus Dominus involvit undis diluvii, eorum tamen inventiones bonas aquis non extinxit: ſed caros ſuos juſtos quos reſervavit ab undis ditavit inventionibus malorum illorum quos ſubmerſit. Quid unquam bonum per malum exquiſitum periit? Num in Eccleſiaſte ſecundo capitulo dicit Salamon "peccatori dedit Deus afflictionem et curam ſuperfluam, ut addat et congreget et tradat ei qui placuit Deo." O quanta vis Divinæ potentiæ et quanta eſt bonitas providentiæ ejus quæ lex eterna eſt, ut non tantum bona quæ fuerunt boni ſed et bona et mala quæ mali fuerunt omnia cedunt ad comodum bonorum, nec unquam perpetravit impius quod non convertitur in decorem univerſi! Sic Deum laudant bona, laudant et omnia mala, quæ, licet inordinata per homines, Dei judicio diſpoſita ordinate ejus operantur honorem, bonis conferunt bona et malis juſtitiam largiuntur. Sic nichil in mundo relinquitur quod non cantet cum Angelis, Gloria in excelſis Deo. Culmen regium et inſtitutionem ejus nedum laudavit ſed et approbavit Dominus, Geneſis xvij. C°., ubi Abrahæ dixit, "reges ex te egredientur:" et ejuſdem xxvj. C°., ubi Iſaac in terra Paleſtinorum peregrinanti ait, "tibi enim et ſemini tuo dabo univerſas regiones has complens quod ſpopondi Abraham patri tuo;" et ejuſdem xxxv. C°., ubi Jacob dixit Dominus "reges de lumbis tuis egredientur," &c. Numquid non bonum fuit quod patriarchis hiis Dominus tam cedulo promiſit quaſi in cumulum omnium beneficiorum quibus eos tam copioſe dotavit, cum populum ſibi acceptabilem et peculiarem ex eis generari decreverat? Sic et ſtatum regium approbavit Apoſtolus, cum omnibus obedire regi tanquam precellenti preceperit. Et cum omnes homines tanto ſint meliores quanto ſimiliores fuerint Deo, quis rege melior ſanctior ve eſſe poterit, qui homines regens Deo regenti omnia ſimilatur. Hoc ex ſententia Sancti Thomæ in libro quem ſcripſit regi Cipri De Regimine Principum colligere licet.

Cap. X.

Hic oſtendit Tractans omnia regna ſuperiora ſub Lege Naturæ fuiſſe incepta, et per eam debere poſſideri.

Igitur poteſtas regia, etſi per iniquos fuerit initiata, bona eſt. Et ſi ante diluvium exorſa ve poſt diluvium ipſa primitus prorupuerit, ſub ſola tamen lege naturæ ipſa ſumpſit exordium. Nam ante tempora Moyſys alia non fuerat lex humana præter quaſdam conſuetudines per homines in quibuſdam territoriis introductas, quæ nequierunt inchoaſſe regiam dignitatem, cum conſuetudo ex iteratis actibus et longevitate temporis tantum excreſcat, quo ipſa regis faſtigium non potuit principiaſſe. Et conſtitutiones principum, quæ tantum ſubditos ligant, regium culmen quod ſuperiorem neſcit conſtituiſſe non valebant; preſertim cum ipſæ a tempore Moyſys ortum habuerint, ut ſcribitur vij. Di. C°. primo; nec ordinationes hominum quibus eorum aliqui eriguntur in

reges conſtitutiones merenter dici ſed legis naturæ actus. Sola igitur Lex Naturæ regiæ celſitudinis primordia ſtabilivit: quare an lex illa eandem dignitatem tunc rexiſſe potuerat ſtolidum foret heſitare, cum minoris ſit virtutis regere quam plaſmare: nec quin ipſa rexerat faſtigium illud poſtquam condiderit ambigimus, cum alia tunc non fuerat lex quæ illud potuit gubernaſſe. Et quin ſemper ſic facere poſſit lex naturæ, nos ſacri Canones dubitare non permittunt, qui legem hanc perpetuam eſſe prædicant nec mutari poſſe. Et ſi conſuetudo aliqua jam inolevit quæ pro poſſidendis regnis legi naturæ aliquid ſuperaddat, ſi ſupererrogatum illud legi naturæ in aliquo repugnet, caſſandum illud judicant Canones, nec conſuetudinem dici poſſe ſed corruptelam (viij. Di. C^a. *Mala Conſuetudo*). Quare ſola lege naturæ terminari poteſt queſtio propoſita, et per eam ſolam diſcuti poteſt omne jus regnandi in quocumque regno quod ſuperiorem neſcit. Numquid tunc recte ſuperius ſcriptum ſit, quod ſub lege hac poteſtas regia ſumpſit exordium, ejus que munimine regnaverunt et adhuc regnant cuncti reges terræ, videlicet juſte civiliter que regnantes et ſuperiorem non habentes? Hæc lex namque mater eſt omnium legum humanarum, a qua ſi ipſæ degenerent indigne vocantur leges. Quod ipſa judicat juſtum eſt, et quod ipſa reprobat reprobatur omni humano jure. Veniat igitur hæc noſtra Fronеſis, ſedeat pro Judice nobis.

Cap. XI.

Objectio Prima.

SED turrim licet robuſtiſſimam ſi quiſpiam erexerit, nec eam fortium robore interius muniverit, inſultantes inimici ſuffodiendo turrim illam proſternent, aut non repulſo eorum conatu muros ejus aſcendentes, theſauros in ea reconditos omnes diripient et aſportabunt. Sic et lex quam validiſſimam probavimus, ſi ab objicientium inſultibus rectarum rationum interius recluſarum munimine non fuerit defenſa, cito ralicitus corruet ſuffoſa, aut ſuperaſcendentes inimici eam robore ſuarum virium theſauro omni ſpoliabunt. Igitur vallum, ſi quo turris quam conſtruximus Lex videlicet Naturæ ab emulis jam videatur obſeſſa, antequam ulterius progrediamur in hoc Tractatu ut poterimus expugnemus. Scribitur primo Regum xij. C^o. quod, poſtquam ad petitionem populi Iſraelitici conſtitutus eſt eis primo rex, propheta Samuel ait ad populum, "Invocabo Dominum et dabit voces et pluvias, et ſcietis et videbitis quia grande malum feceritis vobis in conſpectu Domini, petentes ſuper vos regem:" et poſt pauca ac poſt voces et pluvias datas a Domino ſcribitur ibidem, quod timuit populus et dixit ad Samuelem. "Ora pro ſervis tuis ad Dominum Deum tuum ut non moriamur, addidimus enim univerſis peccatis noſtris malum ut peteremus nobis regum," etc. Verba hæc oſtendunt electum populum peccaſſe regem ſibi petendo: hoc namque aſſerit Propheta: hoc confitetur populus, et approbarunt cœli terrores incutiendi populo peccanti, ut mori timeant pro delicto. Si tam grave

ſit facinus regem poſtulare, quanto gravius eſt peccatum regem conſtituere: populus iſte ſolum unum regem petiit: lex quæ ſuperius laudatur mille reges inſtituit. O quot reges fuerunt tempore Legis Naturæ, cum quaſi in exordio Legis Datæ, Joſue primus Judicum triginta unum reges in ingreſſu terræ Canaan occiderit, majore parte terræ illius vix optenta, ut patet Joſuæ xij. C°.! Nunquid lex bona prædicari poterit, quæ tot mala operata eſt? At ſi unicum regem petere tanta ſententia dampnetur, tot reges lex inſtituens quali judicio multabitur graviori?

Cap. XII.

Secunda Objectio.

PRETEREA predicti libri Regum viij. C°. a Domino præcipitur Samueli, ut ediceret populo jus regis qui imperaturus erat eis, qui inter cetera ſic ait: "Agros quoque veſtros et vineas et oliveta optima tollet et dabit ſervis ſuis," etc. Lex quam juſtificavimus indifferenter omnibus prohibet ne quis alteri faciat quod ſibi non vult fieri. Quis unquam regum voluit aut velle potuit ſibi fieri ut optima pro quibus ipſe ſudavit ſibi auferri deberent et tribui non ſudanti? Et ſi hoc ſibi fieri eum velle non poterit ſuſpicari, et ipſe tamen hoc alteri licite facere poſſit, licere ſibi judicat lex, quam propheta pronunciat, illud quod fieri prohibet lex naturæ. Nunquid jam inter has leges duas fit inexorabile bellum? O qualis pugna Tractanti jam incumbit, qui tamen queſtioni propoſitæ reſpondere nitabatur et jam certare cogitur cum Propheta! Nonne turris quam ædificavit ab hoſtibus eſt obſeſſa? En venit dux exercitus Samuel et cum eo populus dicens "peccavimus" pluſquam ſexcenta milia: cœli tonantes quaſi bumbardis turris quatiant mœnia: propheta muros jure regis ſuffodiens minatur ruinam: populos regem petiſſe pœnitens, ſi ſupra turrim ut ſatagit aſcenderit, omnes reges quos creavit lex iſta jam infra mœnia hujus turris dimicantes interimet et theſauros auferet, videlicet omnia eorum regna. Tantis igitur calamitatibus ædificator turris afflictus, ad mutuum pacis tractatum condeſcendens obſidentes taliter eſt affatus.

Cap. XIII.

Reſpontio ad primam cauſam hujus guerræ: Sed primitus Tractans confundit motivа cauſæ.

DUPLEX cenſetur cauſa quæ hanc guerram ſuſcitavit; una a petentium regem ſcelere ſurrepit; altera eſt lex quæ ſolis regibus eſt conceſſa. Prima, et ſi movere poſſit imperitos ad pugnam, provocare tamen non poterit circumſpectos: nam populus qui regem petiit, tres ſuæ petitionis eſſe cauſas prophetæ denunciavit dicens: "Rex enim erit ſuper nos, et erimus nos quoque ſicut omnes gentes, et judicabit nos rex noſter, et

egredietur ante nos et pugnabit bella noſtra pro nobis." Ecce ut conformes eſſent omnibus gentibus, ut judicarentur a rege, et ut ipſe pugnaret eorum bella, petierunt regem: hæc tria ſi populum illum ad petendum regem movere non poſſe comprobentur, regem tunc ſine cauſa populus poſtulavit, quo ingratitudinis vitio ſe ipſos filii Iſrael maculabant, et tamen dignitatem regiam minime denigrabant. Quare hæc motiva primitus viſitemus.

Cap. XIV.

Reſponſio ad primum motivum.

SCRIBITUR Exod. xix. C°. quod Dominus per Moyſen dixerat populo Iſraelitico verba quæ ſequuntur: "Si audieritis vocem meam, et cuſtodieritis pactum meum, eritis mihi in peculium de cunctis populis: mea eſt enim omnis terra, et vos eritis michi regnum ſacerdotale et gens ſancta." Numquid tunc non regem habuerunt filii Iſrael, quando regem petierunt? Sed non ut omnes gentes: nam gentes hominem, iſti Deum habuerunt regem: illi populus Dei cujus eſt omnis terra, iſti populus ejus peculiaris tunc fuerunt, quos ſpecialius elegit Dominus quum elegit omnes gentes. Quis regum gentium unquam rexit populum ſuum ut Rex iſte populum hunc peculiarem? Numquid Ipſe in vaſta deſerti ſolitudine quadraginta annis populum hunc peregrinantem in tabernaculis hoſpitatus eſt? pane de cœlo pavit: indumenta eorum non ſinit vetuſtate corrumpi: nec eorum calciamenta tanti temporis uſu conteri; columpna nubis per diem a ſolis ardore, et columpna ignis per noctem a caligine et heremi ſqualore, eos toto tempore illo conſexit, et ſerpentes eis inſidiantes ſola exaltati ſerpentis interemit viſione? peculiaris vero erat ſibi populus iſte. Numquid ipſi tunc habere regem alium, aut eſſe ut omnes gentes fuerat oportunum? Et quis regum ita judicavit populum ſuum ut Rex iſte hunc populum ſuum peculiarem? ad ejus namque decreta terra deglutivit rebelles, ignis devoravit inſurgentes, ſerpens momordit objurgantes, et contemptentes ydololatraſque imbecillium concito gladius interemit. Quid ultra? nimis delicatos morte peſſima Rex iſte conſumpſit, et fornicantium principes fecit ſuſpendi patibulis: nec ullum unquam eorum reliquit facinus quod non ipſe juſtiſſime miſericorditer que punivit. Et quis unquam regum bella populi ſui pugnavit ut Ipſe? reges namque Amalech, Amorrhæorum, Baſan, Madian, Canaan, Moab, Amon, Philiſtinorum et omnium aliorum regnorum hunc populum infeſtantium Ipſe devicit: nec ullos reges aut gentes eos ſuperare permiſit, niſi cum populus iſte vocem ejus obaudiens eum contempſerit, vel pactum ſuum tranſgrediens, idolis immolaverit, ſub quali conditione ſibi in peculiarem eundem populum Ipſe, ut ſupra ſcribitur, adoptavit. O quam magnum erat tunc eorum peccatum, talem et tantum regem derelinquere, et deſiderare eſſe ſicut tunc erant omnes gentes qui tantum homines habuerunt reges, Regem Deum pro Rege Homine commutare! cum dicat Scriptura, "maledictus qui facit partem ſuam deteriorem," et propheta Jeremias,

Adſciendum motivum.

Ad tertium motivum.

Exclamatio ſuper enormitate facinoris populi Iſrael petentes regem.

"Maledictus qui confidit in homine et ponit carnem brachium ſuum et a Deo recedit cor ejus." "Non te (dicit Dominus Samueli) dereliquerunt, ſed me." O verbum quod penetrat etiam cor lapideum! "dereliquerunt me venam aquarum vivantium Deum ſuum." Certe recte dixit propheta Samuel, "ſcietis et videbitis quia grande malum feceritis vobis in conſpectu Domini petentes ſuper vos regem:" et certe recte dixit populus, "addidimus univerſis peccatis noſtris malum ut peteremus nobis regem."

Cap. XV.

Concluſio improbans primam objectionem.

Est quamvis populus iſte regem petendo peccatum grande commiſerit, hoc non probat dignitatem regiam quam poſtulabant eſſe iniquam, aut dampnat legem ſub qua dignitas illa extitit inchoata. Quid Pontificiali dignitate ſanctius, licet eam ſæpe ambigit ſceleratus? nec dampnatur activa vita, licet contemplativam deſerens profeſſus inique agat, extunc ſe contaminans negotio ſeculari. In his enim animus non ſtatus eſt in culpa; "ſola enim virtus eſt" (ut ait Philoſophus et Auguſtinus) "qua non licet male uti:" nam quanto melius eſt aliquid quod appetit mens humana, tanto iniquius eſt ejus peccatum, ſi illud nanciſcatur inique, dicente Boætio "quanto major eſt dignitas tanto diſpectiores improbos facit eam videlicet poſſidentes." Dominus autem in hoc proceſſu licet pronunciata Lege Regia populi arrogantiam concuſſerit, regiam poteſtatem approbavit multifarie et laudavit. Nam regem eis ab eo tantum et non ab illis electum conſtituit, quem oleo ſancto linivit et fecit Chriſtum ſuum, quod nulli antea fecit omnium regum. Inſuper et regem iſtum ſpiritu fortitudinis, etiam ſpiritu replevit prophetico, et mutavit in virum alterum, ut in dicti primi libri Regum x°. et xj°. C^is^. continetur; ſic quoque fecit Dominus Davidi, Salomoni, et multis aliis quos poſtea reges conſtituit ſuper populum iſtum. Regem etiam qui hunc populum regeret ipſummet velle eligere diu ante hæc per Moyſen promiſit, Deutron. xvij°. C°, ubi et normam qualiter reges, ſic per eum elegendi, ſcipſos et populum regerent, ut ſingularis regiæ poteſtatis zelator, edocuit, et prolem in ſolio ſucceſſurum regi ſic facienti promiſit. Quis hæc legens neſciat dignitatem regiam bonam eſſe et ſanctam a Domino dilectam et confirmatam, legem quoque ſub qua ipſa primitus erupit tanto eſſe ſanctiorem quanto prolem talem ipſa ſit enixa? Inſipientiam tamen et ingratitudinem electi populi ſui et non regii culminis dignitatem Dominus in hoc proceſſu reprehendit. Quare bona eſt regalis dignitas, et bona eſt lex quæ eam inſtituit. Redeat propterea domum populus iſte regem petens qui ſua penitentia turrim noſtram obſedit, hiis ſermonibus ſatiatus, et accedat jam Propheta legem regiam ſic extollens, ac audiat quæ dicentur.

Cap. XVI.

Reſponſio ad ſecundam cauſam guerræ predictæ: ſed tamen primo diſtinguit Tractans Jus Regis regaliter regnantis a Jure Regis politice et regaliter dominantis.

QUOD SAMUEL propheta Domini, non juſſit tibi Dominus ut cujuſlibet regis legem ediceres populo Iſraeli, ſed Ipſe inconſulta petitione populi hujus ad ſeveritatem concitatus ait tibi, "audi vocem eorum, verumtamen conteſtare eos et predic eis jus regis, non omnis regis, ſed regis qui regnaturus eſt ſuper eos:" nec tu Propheta cujuſlibet regis jus iudicaſti eis, ſed, Dei mandatum fideliter exſequtus, dixiſti populi illi: "hoc erit jus regis qui imperaturus eſt vobis, filios veſtros tollet et ponet in curribus ſuis" etc. Sanctus Thomas in predicto libro quem regi Cipri ſcripſerat, diverſa dominandi genera quæ docet Philoſophus commemorans, *dominium regale* et *dominium politicum* precipue ipſe commendat, quas dominandi ſpecies, Egidius Romanus in libro quem ipſe De Regimine Principum ſcripſerat, diſcribens ait, quod ille preeſt dominio regali qui preeſt ſecundum leges quas ipſemet ſtatuit, et ſecundum arbitrium ſuum; ſed dominio politico preeſt qui ſecundum leges quas cives inſtituerunt eis dominatur. Sed et tertium eſſe dominium non minus his dignitate et laude, quod *politicum et regale* nominatur, nedum experientia et veterum hiſtoriis edocemur, ſed et dicti Sancti Thomæ doctrina edoctum eſſe cognoſcimus. In regno namque Angliæ reges ſine Trium Statuum Regni illius conſenſu leges non condunt, nec ſubſidia imponunt ſubditis ſuis; ſed et judices regni illius ne ipſi contra leges terræ, quamvis mandata principis ad contrarium audierint, judicia reddant, omnes ſuis aſtringuntur ſacramentis. Numquid tunc hoc dominium *politicum*, id eſt plurium diſpenſatione regulatum, dici poſſit, verum etiam et *regale* dominium nominari mereatur, cum nec ipſi ſubditi ſine regia auctoritate leges condere valeant, et cum regnum illud regiæ dignitati ſuppoſitum per reges et eorum heredes ſucceſſive hereditario jure poſſideatur, qualiter non poſſidentur dominia aliqua politice tantum regulata. Et in Romanorum hiſtoriis erudimur qualiter populus ille primitus ſub ſeptem regibus regale regimen expertus, deinde, quia regum inhertias luxus et rapinas diutius ſufferre non poterat, regale excutiens jugum, Tarquinium eorum regem ſeptimum ſimul et regale regimen proſcripſerunt, ac ſe deinceps politico regimini ſubmittentes ſub Conſulibus et Dictatoribus Senatorum conſultu regulatis pluſquam quingentis annis regebantur. Sed demum Julius alter ibidem Conſulum, ſocialis dominii impatiens, tam urbis quam orbis ſibi ſoli arripuit monarchiam, quo ipſe ex tunc regaliter vivere arbitratus eſt, non tamen Regis nomine, quod Romanis exoſum fuit, voluit inſigniri, ſed *Imperator* nominari maluit, ut quidam Conſulum appellari affectabant antea Dictatores. Sed eo hujus arrogantiæ cauſa demum interfecto, Octavianus vir manſuetiſſimus in totius mundi monarchiam erectus mundum univerſum nedum regaliter, ſed et politice Senatorum conſilio gubernavit: conſimiliter que fecerunt nonnulli ſibi ſuccedentes Imperatores, quorum dominium regale et politicum nominat Sanctus Thomas

in libro ſuo predicto, regale, quia eorum placita lex erant omnibus ſubditis ſuis, ſed politicum, non quia per Senatores ſemper conſulti ſunt, nam eorum conſilium multi Imperatorum in eorum pernitiem contempſerunt, ſed quia ad plurium uſum videlicet Romanorum regebant rempublicam, nec ad proprios heredes, ut ſolent regna, imperium Romanum deſcendebat. Sic et filii Iſrael, ut dicit Sanctus ille, ante poſtulatum regem politice regebantur; quo dominium eorum politicum erat et regale, politicum, quia Judices, ſub quibus ipſi regebantur, omnia ad eorum commune et nihil ad ſingulare commodum eorumdem Judicum miniſtrabant—(unde Samuel ultimus Judicum eorum optulit ſe coram Saule primo Rege gentis illius de omnibus quæ ipſe in officio Judicis fecerat reſponſurum, et quam magna erat tunc concio conſilii populi hujus, Liber Numeri xix. ejuſdem C°. revelat, cum ibidem ſcribatur quod ducenti et quinquaginta qui per nomina vocabantur ad conſilium fuerunt in ſeditione Choræ, in qua non alios fuiſſe conſtat, quam de ſolis duabus Tribubus, videlicet Levi et Ruben, per quod conjecturari poterit magnam fuiſſe multitudinem in conſilio illo de omnibus Tribubus Iſrael;) et regale fuerat regnum populi hujus, cum Rex ommium regum hunc populum tunc reverenter ut peculiare regnum ſuum. In hoc regno nulli ante optentum regem homini alteri facere licuit quod ſibi ipſi eum velle ratio non ſinebat, quo nec ſervum aut ancillam cujuſque potuit tunc aliquis invito domino abſtuliſſe, aut alterius agrum contuliſſe ſervis ſuis, qualiter facere eam dicit Propheta eſſe jus regis: quare jus regium quod predixit Propheta tunc in regno illo lex non erat, ſicut nec illud jus eſt in regno aliquo politice regulato. Unde Propheta ſimpliciter et preciſe non dixit, legem quam ipſe promulgavit eſſe jus regis ſed relative dixit eam eſſe jus regis qui imperaturus erat filiis Iſrael: ac ſi dixiſſet non amodo politico dominio, aut regali et politico, ut antea, regetur populus iſte contumax et ingratus, neſcius ſui boni, ſed dominio tantum regali gubernabitur, quo ut chamo et freno eorum pertinatia conſtringetur.

Cap. XVII.

Deinde comparat Jus Regis cum Jure Naturæ et oſtendit difficultatem hujus diſputationis.

MEMORAVIMUS jam paululum litem quæ inter legem naturæ et jus regis fuiſſe putabatur, ut jam non omne jus regis, ſed ſolum jus regis regali dominio præſidentis, cum lege natura contendere relinquatur. Sed hoc Jus Regium cum ſub maximis mundi principibus militet, confiſum de eorum preſidio non leve videtur poſſe committere cum Lege Naturæ duellum. Nam Sanctus Thomas in libro ſuo predicto ſentire videtur quod, quanto regimen aliquod divino regimini ſimilius ſit, tanto regimen illud ſit preſtantius, ut meliora ſunt omnia quanto Divini ſimilitudini vicinius appropinquant. Ex qua veritate Sanctus ille perſpicue deducit, ut ſicut Deus unus ut vult ſolus omnia regit, ſic et unius optime diſpoſiti viri principatu melius quam plurium regentium dominio regitur omne regnum. Sed principatus talis non alterius poteſt eſſe, quam regis regali dominio

principantis, cujus lex eſt jus illud quod Propheta predixit. Quare ſequitur quod lex illa nedum inculpabilis eſt, ſed et optimam eſſe judicari meretur, cum optime regentis jus ſit, et legi Dei qua, ut vult ipſe, omnia regit maxime ſimiletur. Num jam Jus Regis nedum ſtrenue in hoc certamine ſe defendit, ſed et Legem Naturæ nonnulli impellit diſcrimini, cum jus iſtud regium hoc reſpectu omnium legum vendicet habere primatum? Quæ tunc pœna ex promulgatione tantæ legis Iſraeli populo potuit ſucceſſiſſe, aut quem terrorem potuit lex optima ſub optimo rege populo illi intuliſſe? Numquid lex naturæ dampnare poterit legem quam naturæ Dominus inſtituit? Verum et ſi bona lex iſta non fuiſſet ſummé, bonus et juſtiſſimus Princeps populum ſuum peculiarem per eam regi non juſſiſſet. Sed, e regione, cum populus iſte in regnum peculiare ex omnibus populis a Domino electus, et ab eo, quaſi unigenitus a patre, tenerime educatus, et legibus quas Ipſe pro eorum ſingulari regimine et favore piiſſime edidit regulatus, hæc parvipendens ingratus ei eum dereliquerit, ut Ipſe conqueſtus eſt, et deſideraverint iterum eſſe ut omnes gentes, et habere regem hominem eos judicantem ſicut tunc univerſæ habuerunt nationes, prout in predicto octavo capitulo primi libri Regum continetur, quo Dominus commotus cœlum juſſerit eos imbribus et tonitru terrere, et preceperit Prophetæ ut conteſtando ediceret eis jus regis, et non omnis regis, ſed jus regis qui regnaturus eſſet ſuper eos quibus Ipſe erat offenſus, quaſi ut ſeveritate legis illius conterriti, ipſi a ſtolida et minus provida poſtulatione ſua deſiſterent, poteſt hæc lex quam Dominus tam rigide ingrato populo diſtribuit dici lex optima aut eis bona ſuſpicari? Quis judex bona tribuit merenti mala, cum bona bonis, mala malis, omnis æquus arbiter recompenſet? An meliori lege quam ea qua Dominus eos antea rexerat potuit populus iſte per hominem gubernari, aut placitum poteſt eſſe patienti quod ei infligitur pro peccato? peccatum namque eorum tunc in foribus aderat, quo compulſi, ut ſupra memoratur, dixerunt, "addidimus univerſis peccatis noſtris malum petendo nobis regem." Et tamen malam eſſe legem, quam Dominus nedum publicari ſed et ad perpetuam memoriam ſcribi mandavit, nephas eſt putare. Nonne jam quaſi procelloſis undis quatitur hæc Tractans ut navis in turbido mari? Nam ſi dicat jus regis predictam legem eſſe optimam, Providentiam Divinam ipſe culpat, quæ legem illam pro ſceleri genti tribuit peccatrici; et ſi condempnet illud, numquid et Deum ejus auctorem pariter ipſe ſenciatur condempnaſſe? Ecce anguſtias undique! Quid igitur conſulendum eſt, niſi ut mutuum tractatum, ad quem ſuperius Tractans condeſcendit, ipſe jam cum modeſtia proſequatur, quo fortaſſis reperiet conſolamen aliquod hujus diſcriminis ſui? quod et ipſe facere proponens, Jus Regium taliter allocutus eſt.

HIC SEQUUNTUR INVECTIONES QUÆDAM CONTRA COMPARATIONEM PREDICTAM.

Cap. XVIII.

Lex Naturæ ſtatum regium in ejus initio operata eſt, licet iniqui eundem ſtatum primordiarunt.

RECOGITA, obſecro, Jus Regis, et mente pertracta qualiter poteſtatem regiam ſub lege et a lege naturæ ſumpſiſſe exordium, et per eam ſemper fuiſſe et eſſe regulatam audiſti ſuperius veriſſime declaratum; quibus non obeſt, ſi nephandi homines poteſtatem illam inchoarunt: nam licet Judei morti Chriſtum tradiderint, etiam Deus Pater ipſum per eos morti contradidit, ſed Judei propter invidiam, Pater propter miſericordiam hæc fecerunt; ſic licet iniqui propter ambitionem culmen regium initiarunt, ex naturæ propter hominis bonum etiam illud per iniquos illos inchoavit, illi peccando, lex juſtiſſime operando, ut in uno eodem que actu nedum juſtitiæ virtus, ſed et peccati malicia, legis naturæ operibus militarent. Sic quoque iniquitas Cayin avaritiæ cauſa primo limites poſuit in terra, et ſuperbia Nembroth primum ſuper homines dominium uſurpavit, nil tamen hiis melius aut commodius humano generi potuit accidiſſe, cum ſi omnia, ut antea, communia remanſiſſent, nec in terra fuiſſet ſuper homines dominatus poſt hominis culpam, res publica hominj minus commode fuiſſet tractata, et pro defectu juſtitiæ humanum genus ſeſe cæde mutua laceraſſet. "Gentes etenim," ut ait Apoſtolus ad Romanos ſecundo capitulo, "licet legem non habeant, naturaliter ea quæ legis ſunt faciunt, et ejuſmodi legem non habentes ipſi ſibi ſunt lex, qui oſtendunt opus legis ſcriptum in cordibus ſuis." Modum tamen quo gentes per legem naturæ regiam poteſtatem inchoarunt, vel potius, quo lex ipſa eam per gentes inchoavit, Sanctus Thomas primo libro tractatus ſui De Regimine Principum, creditur veraciter docuiſſe, cum dixerit, quod in omnibus quæ in unum ordinantur aliquid invenitur alterius naturaliter regitivum: ut in univerſitate corporum per primum corpus ſilicet celeſte tereſtria corpora regulantur, et illa per creaturam rationalem, et corpus hominis per animam ejus, et partes animæ, ut iraſcibilis, et concupiſcibilis, per rationem, et membra corporis hominis per caput et cor omnia gubernantur. Et cum naturale ſit hominis, quod ſit animal ſociale et politicum in multitudine vivens, ut ibidem liquide comprobatur, et unuſquiſque privato et proprio comodo naturaliter provideat et intendat, humanæ ſocietatis multitudo, ſi nullo ejus gerente curam regeretur, defflueret et perriret, maxime poſt hominis naturam

peccato vitiatam, quo prona facta eſt ad delictum. Hinc et cum ars, ut dicit Philoſophus, in quantum poteſt naturam imitetur, gentes multitudini ſocietatum ſuarum rectores conſtituerunt, ut natura in omnibus ex diverſis unitis aliquid conſtituit regitivum, et horum rectorum poteſtatem, quia alios ipſi *regunt*, dignitatem et poteſtatem *regiam* gentes *antonomaticè* appellarunt. Sic que culmen regium ortum et eſſe ſuum, licet ſub vel ab infidelibus, naturaliter tamen et legis naturæ inſtitutione, ſortitum eſt. Et cum jus dicatur id quod ſemper bonum et æquum eſt (ut ff: de Juſtitia et Jure), regiæ poteſtatis inſtitutio a quocumque ipſa facta fuerit juſta erat, cum nedum ſemper bona ſed et æqua cenſeatur, nec quin ratam eam habuerit Dominus Sacra Scriptura nos heſitare permittit, cum ſicut homini quem ipſemet creavit, etiam et regnis quæ gentes fecerunt, Angelos pro eorum tutelâ delegaverit, ut patet Danielis x. C°. Et licet principes Græcorum et Perſarum qui ibi memorantur Angelos fuiſſe malos a quibuſdam fuerit ſuſpicatum, ipſos tamen bonos Angelos exſtitiſſe Sanctum ſcripſiſſe Gregorium Vincentius in libro quem De morali inſtitutione Principum ſcripſit affirmavit; nec parva regnorum infidelium approbatio eſt, quòd Deus Azahel in regem Siriæ unius regnorum Gentilium ungere Heliæ prophetæ precepit, iij. Reg. xix. C°.

Cap. XIX.

Jura gentium leges fidelibus non faciunt, ſed eorum legibus nomina ſæpius imponunt.

NON enim ab aliquâ aliâ lege quam a lege naturæ regiam poteſtatem fuiſſe primitus inſtitutam poſſumus confiteri, cum tempore inſtitutionis ejuſdem aliam non fuiſſe legem ſuperius ſit oſtenſum. Et licet Leges Civiles dicant, quod a jure gentium diſcretæ ſunt gentes et regna condita, ut in predicto Titulo Digeſtorum expreſſatur, illud in nullo detrahit ſupradictis. Nam in eodem Titulo expreſſe docetur quod illud quod naturalis ratio inter omnes homines conſtituit apud omnes gentes peræque cuſtoditur, et vocatur *jus gentium*, quaſi quo jure omnes gentes utuntur. Et quid eſt quod naturalis ratio inter omnes homines conſtituit niſi naturalis æquitas, quæ lex naturæ eſt, ut quintâ Di. C°. primo, in Gloſſa docetur: ? Quid tunc aliud eſt jus gentium quod tam celebre extollunt leges niſi illæ juris naturæ leges quas omnes gentes obſervant? Nam poſtquam gentes aliquas juris naturæ leges quæ eis tam accommodæ fuerunt, quod ſine illis etiam ipſæ recte vivere nequierunt, in ſuos uſus receperunt, leges illæ ſic per eos admiſſæ juris gentium nomen ſortitæ ſunt. Abſit enim ſuſpicari quod jura gentium ideo leges ſunt fidelium quia gentes eiſdem utebantur; nam et ydolatriam inter potiſſima jura ſua gentes antiquitus numerabant; quid tamen hòc ſceleſtius inter fideles poterit nominari? ſed profecto ſolum leges illas naturæ quas gentes ad ſui regimen admiſerunt, ad differentiam aliarum naturæ legum in quas omnes gentes non aſſentiunt, nomine *juris gentium* leges civiles deſignabant. Nuſquam enim in tota Veteris Teſtamenti ſerie leguntur leges aliquæ nomine juris gentium fuiſſe deſignatas; ſolum enim

Leges Civiles ſunt quæ leges a legibus nomine illo primitus diſtinxerunt. Scitur namque indubie quòd uſus inter gentes, licet longiſſimus fuerit et in legem conſuetudinis evaſus, non ideo nomine juris gentium fideles ligat inter quos uſus ipſe minime inolevit. Nam quamvis ſacræ illæ Leges Civiles dicant, quod emptiones, venditiones, conductiones, et hujuſmodi a jure gentium fuerunt inſtitutæ, conſtat indubie quod millibus annorum antequam gentes eſſe ceperunt contractus hujuſcemodi legittime extiterunt. Nam ante diluvium gentes non fuerunt, ſed, ut oſtendit Sanctus Auguſtinus xvj. libro de Civitate Dei, tempore Phaleg qui ſextus a Noe fuit, et *diviſio* interpretatur, primitus diviſa eſt terra, et diviſi ſunt populi in gentes ſeptuaginta duos et in totidem linguas, dum turrim Babulonis filii Noe edificarunt, et ante hanc diviſionem conſtat gentes non fuiſſe, ſed in toto orbe erat gens una, populus unus et lingua una. Unde Geneſis X. C°. ſcribitur ſic: "Hæ familiæ Noæ juxta populos et nationes ſuas, ab his diviſæ ſunt gentes in terra;" et ibidem xj. C°. ait Dominus, "ecce unus eſt populus, et unum labium omnibus;" quæ verba notans Sanctus predictus in libro predicto ait, "et dixit Dominus Deus, ecce gens una et labium unum omnibus." Unde illud quod dicunt leges, videlicet quod contractus predicti a jure gentium fuerunt inſtituti, nihil aliud eſt aut eſſe poteſt, quam ut ſi dixiſſent quod contractus hujuſmodi a lege naturæ quæ gentes in caſibus illis utuntur, fuerunt inſtituti, et ſic non primariè aut originaliter, ſed ſecundariè et approbativè a jure gentium inſtituti ſunt. Et ſub hac formâ intelligi debent verba ſuperius recitata, quæ dicunt quod a jure gentium diſcretæ ſunt gentes et regna condita: nam ante diſcretas gentes jura gentium non fuerunt: quare a jure gentium nequierunt gentes primitus ſegregari, ſed conſtat diſcretas gentes jura gentium effeciſſe. Sic nec emptiones, venditiones et hujuſmodi a gentibus inceptæ ſunt, ſed a lege naturæ rectâ ratione inventæ a jure gentium eâdem ratione ratæ fuerunt et admiſſæ.

Cap. XX.

Lex Naturæ formavit contractus hominum nec ipſa mutata eſt hominis peccato.

Et cum dixerat Dominus Adæ, "in ſudore vultus tui veſceris pane tuo," numquid ex tunc Adæ non licuit alteri vendiſſe panem quem dixerat Dominus eſſe ſuum? et cum ſcribatur Geneſis iiij. C°. quod Abel optulit de primogenitis gregis ſui, numquid non ſua tunc erant illa qua Scriptura Sacra dicit eſſe ſua? et tunc conſtat jura gentium non fuiſſe cum fratres duo gentes nequiverunt effeciſſe. Quare neceſſarie conceditur quòd ſola lege naturæ proprietas rerum, maximè ſudore adquiſitarum, homini primitus accrevit, cum tunc alia non fuerat lex humana; et per conſequens emptiones, venditiones, locationes, conductiones et hujuſmodi, a lege naturæ originem ſumpſerunt, quæ lex perpetua eſt et, ut dicunt Canones ſuperius memorati, ab exordio rationalis creaturæ incepit nec variatur tempore ſed immutabilis perſeverat. Hominis tamen ſtatus per peccatum mutatus eſt,

ſed non lex naturæ, de qua etiam dicunt leges civiles, quod, naturalia jura quæ apud omnes gentes peræque ſervantur divinâ quâdam providentiâ conſtituta ſemper firma et immutabilia permanent. (Inſtit. de Jure Naturæ, Gentium et Civil.) Ipſa namque lex quæ jam nos facit dicere, hoc eſt meum et illud tuum, ante hominis peccatum taliter dicere prohibebat. Nam lex illa eadem eſt cum innocentem libertate gaudere decernit, et cum eumdem hominem criminis conſcium libertate privet vinculis que detrudat, et pro facinore omnibus privet bonis ſuis: in his namque hominis ſtatus et meritum ſed non lex naturæ mutatur. Sol idem eſt qui lutum liquidum condenſat in teſtam, et qui aquam congelatam reſolvit in fluentem: et flatus qui facem ignitam accendit in flammam, non alius eſt quam qui calidam refrigerat tunc polentam: in hiis enim patientum qualitates mutationes cauſant quas luunt ipſi patientes: ſed efficiens cauſa ſtabilis permanens non mutatur: ſic que juſtitiæ naturalis equitas non alia eſt quæ olim innocenti homini communionem tribuit omnium rerum, quam equitas iſta eſt quæ jam homini culpâ vitiato communionis bonum aufert pro delicto. Numquid tunc non conſtans ſemper eſt lex naturæ vel non perpetua, aut ſi non ſemper unicuique quod ſuum eſt ipſa tribuat non mutata? O Jus Regis ut quid te comparas huic legi? Tu ſemper in terra cum peccatoribus converſatum es: hæc olim in Paradiſo mediante gratiâ meruit regere innocentes; tu hominis aſtutiâ, hæc, ut dicunt leges, Divinâ providentiâ conſtituta eſt; tu a gentibus prodiſti, hæc a Deo; tu voluntate hominis mutabilis es, hæc immutabilis ſemper una et eadem perſeverat. Et cum iſta regem ſub quo tu militas regat, numquid et te ejus famulum ipſa gubernabit? Nihil vere aliud eſt regere regem quam regere actus ejus quorum tu præcipuus es. Define ergo cum Lege Naturæ certare; ipſa namque domina tua eſt, et domina domini tui; ſi bene egeris adoptata et dilecta eris ei ut filia, ſi vero male, punieris ut meilla

Cap. XXI.

Revelata mali quod evenire potuit populo Iſraeli per Jus Regis ſubſannat. Tractans comparationem prædictam.

ADENTE etiam rumina, Jus Regis, qualiter toto tempore quo populus iſte, cui tu præſides, ſub lege Deo ut ei peculiaris politice regebatur, nec unius eorum impunitus evaſit exceſſus, nec, ut ſupra ſcribitur, quiſquam alteri facere quod ſibi fieri noluit, habuit libertatem: ſed conſtituto eis rege homine, licet eorum omnes reliqui ut antea ſub diſciplina legis remanſerint, ipſe tamen rex nulli relinquebatur ſubditus, qui legis cujuſque vigore potuit ejus facinora cohibere; ſic que poteſtatem recepit rex portulatione populi hujus erectus, ut licet quoſque alios ipſe poſſit ad recte vivendum conſtringere, ipſe tamen deinceps perperam agere potuit omnibus humanæ legis nexibus abſolutus. Unde et ſi potentis populi regem filios et filias operibus ipſe oppreſſerit eorum ve bona diripuerit,

ſervos et ancillas ſervitio ſuo mancipaverit, aut eorum prædia dederit ſervis ſuis, corripientem non invenit rex ille; nam poteſtatem ſummam et abſolutam ad petitionem populi gravati a Deo ipſe receperat, ita ut ejus exceſſus corrigendi poteſtas nulli homini fuerat tunc relicta. Quid tunc ante regem hujuſmodi eis conceſſum penalius dici potuit populo huic qui petendo regem Dominum ad iracundiam provocavit, quam edicere eis jus regis qui ſuper eos poterit ſic regnare: et ne ſpes ulla eis relinqueretur quod Deus tirannidem ſui regis, ſi in eos taliter fuerit debachatus, ad eorum clamorem retunderet, ait eis Propheta, "Clamabitis in die illa a facie regis veſtri quem elegiſtis vobis, et non exaudiet Dominus vos, quia petiſtis vobis regem." Numquid jam jus regis ſimile eſt juri naturæ? ſicut yronice ait Dominus Adæ, quem poſt peccatum tunicâ pelliciâ veſtivit, "Ecce Adam factus eſt quaſi unus ex Nobis."

Cap. XXII.

Rex regaliter et Rex politice regens equaliter aſſimilantur Deo.

ET licet principem ſub quo tu militas, Jus Regis, qui ad nutum ſuum omnia dirigit in regno ſuo, ſimilem in hoc eſſe Deo, qui ut vult univerſa gubernat, rectiſſime conſideraſti, quo et te ipſum, ejus placitum, ſimile eſſe legi Dei, cujus velle lex eſt, non minus prudenter gloriaberis, pertimeſce tamen ne hiis conſiderationibus elatum ſupra leges regis regaliter et politice populum ſuum gubernantis temerè te extollas: tu namque ſimile es legi Dei qua Ipſe univerſa regit in terra, illæ vero leges ſimiles ſunt legi ejus qua in patriâ pace quam optant reguntur omnes Beati coregnantes cum Chriſto, quorum ſenatores quidam ſedent ſuper tronos homines judicantes, et quidam, ut ait Apoſtolus, etiam Angelos judicabunt; ubi non aberit concenſus omnium civium in ſingulis judiciis Regis. Et Sanctus Thomas in ſecundo libro De Regimine Principum dicit, quod "regimen politicum regali preponitur, ſi regimen illud referatur ad ſtatum integrum humanæ naturæ qui ſtatus innocentiæ appellatur, in quo non fuiſſet regale regimen ſed politicum:" tamen quia unius et ejuſdem poteſtatis ac majeſtatis eſt ſemper Deus regens in cœlo et in terra, et judicia quæ vos ambæ Leges profertis, ut ait Joſophat ij°. Parolip. xix°. C°, "non ſunt judicia hominum," et ideo nec Regum quibus ſubeſtis, ſed judicia ſunt Dei qui non eſt acceptor perſonarum, et ideo hec populorum—nam, ut ait Sanctus Petrus Actuum x. C°, "in omni gente qui timet eum et operatur juſticiam, hic acceptus eſt Illi"—quare cum æqualis ſimilitudo Dei Reges ſub quibus vos regitis populum ejus æquales reddiderit, et monarchæ ſint ambo Reges in regnis ſuis, ut Deus in mundo ſolus eſt monarcha, et voſmet ipſas leges æquales eſſe judicate, nec poteſtate diſpares aut dignitate.

Cap. XXIII.

Consulit hic regaliter regnanti, etiam politice regnare.

SED, Rex qui regaliter regis, satage ut potes etiam politice regere populum tuum; *policia* namque a πολις dicitur quod est *pluralitas*, et κρατ *administratio*, quasi *regimen plurium consilio ministratum:* tu plurium consilio tracta rempublicam regni tui. Romanorum regnum cccxx. Senatorum consultu diu regulatum a minimo in maximum mundi crevit imperium. Sapientissimus Salamon in regem erectus non solum sapientiam quâ regere posset populum, sed et cor docile quo ultra quam ipse naturaliter sapiebat addiscere posset deprecatus est: sed filius ejus Roboam prudentum spernens consilium paterni regni perdidit plusquam decem partes. Quo erudimur quod sensus regis sufficiatque sine consultorum adminiculo regnum regere non sufficit, licet rex ille filius fuerit Salamonis. Plurium sapientiâ doctus, etiam plurium prudentiâ pollet, sed qui proprio innititur ingenio, non nisi ut unus sapere comprobatur.

Cap. XXIV.

Hic consuliter politice regnanti etiam certis casibus regaliter gubernare.

ITERUM, Rex qui politice dominaris, etiam, cum casus poposcerit, regaliter rege populum tuum, non enim omnes casus poterunt a statutis et consuetudinibus regni tui amplecti, quo casus residui arbitrio tuo relinquntur; ad libitum etiam tuum tu semper regis omnia criminalia, et pœnas cunctas moderaris vel remittis: dummodo sic facere poteris sine subditorum jacturâ, et offensâ consuetudinum et statutorum regni tui. Epikaia etiam sagacitati tuæ relinquitur, ne rigor verborum legis mentem ejus confundens lædat commune bonum. Nam legem quæ prohibuit murorum civitatis ascensum ipse non offendisse judicatus est qui muros illicentiatus ascendens hostes subito irruentes propulsavit, qui alias civitatem captivassent; nam tunc observatio legis illius legem devorasset cum auctoribus suis. Nec mille illi Machabei qui in Sabbato trucidati sunt mandati quod Sabbatum sine omni conditione observari precepit fuissent contemptores, quamvis in Sabbato cavernis in quibus tunc latitabant exissent, et insultantes inimicos expugnassent (Primo Machabeorum ij. C°). Epiches, ut dicit Ægidius Romanus, est indulgere super justum, natura namque humana semper supplicat pro venia. Hæc virtus, ut dicit Philosophus v°. Ethicorum, justum legale non diminuit: *epiekaia* enim dicitur ab επι quod est *supra*, vel *laus*, et καια quod est *laxa*, λ mutato in κ, quasi *superlaudabilis laxatio rigiditatis legis*. Quo superior ille potestatem censetur habere absolutam, non tamen ut possit solvere legem perfectam; sed ut ratione legis naturæ, quæ naturalis equitas est, legem regni sui ipse possit potius adimplere. Nam sæpe lex scripta sub velamento verborum

quaſi mortua jacet, non totum examinis, et tunc vitalem mentem ejus per epikaiam Princeps quaſi a ſompno excitat, ut medicus ſtupidum relevat ſincopantem; ut tunc quaſi de duabus legibus ſub uno velamine quieſcentibus dici poterit evangelicum illud, "erunt duo in lecto uno, unus aſſumetur, et alius relinquetur." Et ſæpe ea quæ legis verba amplectuntur, mens latoris non perſenſit; quare tunc officium boni principis, quæ *lex viva* dicitur, ſupplet defectum legis ſcriptæ quæ ut mortua ſemper immobilis perſeverat. Unde non immerito dicitur per Philoſophum, quod melius regitur regnum optimo rege quam optima lege. Sed caveat ſemper rex politice dominans ne ipſe leges regni ſui juſtitiâ gravidas repudians, leges novas inconſultis regni proceribus condat, vel inducat peregrinas, quo ipſe politice deinceps vivere recuſans, jure regali obruat populum ſuum.

Cap. XXV.

Hic panduntur caſus quidam in quibus politice dominans neceſſario regaliter gubernabit.

SUNT tamen et caſus alii quam plurimi in quibus regi politice dominanti, etiam regaliter in quoſdam populi ſui licet quandoque et expedit ſævire; ut ſi populus ſuus in eum ſurrexit, vel plebs extranea regnum ejus invaſerit, quo tempus non ſinet omnia quæ reſiſtendi repellendi ve neceſſitas exiget agere in forma et per proceſſus legum quæ tempore pacis in regno illo uſitantur. Quare tunc licebit regi illi proprio arbitrio filios tollere regnicolarum ſuorum et eos ponere in curribus ſuis, ac facere eos equites quadrigarum ſuarum, ceteraque omnia peragere quæ facere predixit Propheta Iſraeli populo eſſe jus regis. Nam ſicut medicus infirmi, ſic rex omnis curam agit regni ſui, quia ut morbus corporum, ſic vitium languor eſt animorum. Medicus morbidum cancro vel coroſo quovis morbo languentem ſepius ligat, ne acerbitatis medicinæ languidus impatiens ſalutem propriam effugiat, et quandoque membrum infectum chirurgicus abſcindit, cum non poſſit corporis reſiduum medio alio conſervare incolume, nec peccat tunc medicus vel chirurgicus ille licet mancum dummodo ſanum reddat ægrotum. Sic nec rex bonus tempore talis perturbationis in regno ſuo ſubortæ ſubditorum ſuorum bona diripiens et quoſdam ex eis periculis inevitabilibus exponens, oneribus que et laboribus alios opprimens pro ſalute regni ſui, quam aliter ſalvare non poterit. Nam cum ars ut predicitur naturam imitetur, et natura omnia operetur optime, ac ars vivendi omnium artium gerit primatum, cum ceteræ artes omnes ad eam referantur; ſicut natura patitur humanum corpus, ne totum intereat, a medico mutilari, et ſingula membra incitat ut citius ictibus ſe exponant quum caput eorum periclitetur, ſic ne rex, qui caput regni ſui eſt, intereat ſunt ejus ſubditi periculo exponendi; et cum rex, ut dicit Sanctus Thomas, detur propter regnum, et non regnum propter eum, quo ipſe ad regnum referatur ut cauſatum ad cauſam, citius quam regnum pereat ſe ipſum debet periculis omnibus mancipare. Quare attentis premiſſis, dignitas aut ſtatus regis regaliter tantum dominantis, aut

regis regaliter et politice presidentis regum illorum alterum alteri non preponit, sed tantum bonitas et justitia regentis. Nam pares eos facit similitudo quam habet eorum dignitas ad regimen Dei, sed sæpe dissimiles sunt reges illi similitudine quâ ipsi divinis actibus similantur. Igitur subditi Regis regaliter regulantis, plaudite sub optimo rege, cum talis affuerit, quia et lugere vobis necesse est, cum rex insolens vobis dominetur aut avarus. Et vos subditi Regis regaliter et politice presentis consolamini quod, si rex vester taliter insolescat, liberis ad hoc, ut alius, ipse non gaudet habenis.

Cap. XXVI.

Rex politice imperans equalis potentiæ et libertatis est cum rege regaliter dominante.

UT quamvis Rex politicè dominans non possit sine assensû Procerum regni sui mutare leges suas, sed tamen cum leges deficiant supplere vices legum, non propter hoc extollat se Lex Regia, putans se in hoc potentiorem liberiorem ve esse Lege Politica, aut regem suum potentiorem liberiorem ve esse rege politicè populum gubernante, cum peccare posse potestatis non sit, sed impotentiæ servitutis que periculum, ut orbari visu vel posse virtutes ignorare. Nam si superbiæ flatus ita hominis animum affecerit, ut ipse humilitatem modestiam que deferens in ambitionem rapinamque regnorum elevetur, aut si libido carnem ejus ita exarserit ut in luxuriam incestumque labatur, cupiditatis ve scelus aut iracundiæ tumor hominem in furti aut homicidii facinus dejiciat, nonne ab impotentia hominis illius tunc prodit peccatum ejus, cum si non vitiis illis ipse victum se reddiderit, peccatum illud minime potuit tunc expleri? Sic et omne peccatum quo maculatur homo ab impulsû vitiorum et vecordiâ hominis, quâ vitiis illis servum se reddit, progreditur, quo ab impotentiâ inertis hominis et ignavi illud orire necesse est fateri. Quare posse peccare potestas non est aut libertas, sicut nec posse senescere vel corrumpi, neque potens facere peccatum potens simpliciter dici poterit, propter contrarium in adjecto, sicut nec homo mortuus simplicitur homo poterit nominari. O quanta tunc eminet peccatoris impotentia, simul et ejus servitus comprobatur, cum ipse primitus, vitiis iniquis animum ejus afficientibus quasi tirannis fortioribus devictus, pusillanimitate et ignaviâ animi sui se eis reddiderit in servum, dicente Domino, "qui facit peccatum servus est peccati;" quo ille deinceps affectionibus et passionibus propriis, quas veteres *perturbationes* appellabant, quasi quibusdam vinculis in servitutis carcere detruditur: de quibus Boetius metricè sic scribit:—

"Etenim licet Indica longe
Tellus tua jura tremescat,
Et serviat ultima Thule,
Tamen atras pellere curas,
Miseraque fugare querelas
Non posse, potentia non est."

Et cum omnes actus hominum, ut dicit Boetius predictus in quarto libro De Conſolatione etc., duobus perficiantur, videlicet voluntate et poteſtate, (de quibus Metriſta quidam ſic ait: "Omnes res geſtas faciunt duo, velle, poteſtas; Si disjungantur disjuncta nihil operantur"), conſtat quòd cum fecerit quis aliquid, eum illud voluiſſe et facere potuiſſe, et ſi quid voluerit homo nec illud fecerit, ipſum in hoc fuiſſe impotentem neceſſe eſt judicare. Sed cum Summa Bonitas naturam humani generis in ejus exordio ita de Sua bonitate affecerit, ut bonum ſemper ipſe velit, (ut dicit idem Boetius, "niſi errore ſeductus non poterit homo quicquam velle niſi bonum quod objectum eſſe dignoſcitur voluntatis,") ſequitur, ſi bonum facere deſerat homo, hoc ex impotentiâ evenire, cum ex voluntate non potuit emigraſſe. Quare ſi bonum ſit omni populo legibus regi in quas ipſi aſſentiunt, neceſſario confitebitur regimen regis qui hujuſmodi legibus regit populum ſuum, quod *regimen politicum* appellatur, a poten iâ deſcendere, ſicut et ab hujuſmodi regis voluntate; quo potens eſt omnis rex talis, nec ratione hujuſmodi regiminis dici poterit impotens aut non liber, cum quod vult ipſe facit potentiore aliquo minime præpeditus. Et quod bonum ſit hujuſmodi legibus populum regulari, Sanctus Thomas in primo libro Tractatus ſui prenotati apertiſſime docuiſſe videtur. Nam poſtquam ipſe ibidem *oligarchiam*, quæ regimen paucorum malorum eſt, et *democrachiam*, quæ regimen eſt plurium malorum, dampnaverat, et *ariſtocrachiam*, quæ regimen paucorum eſt bonorum qui *optimates* dicuntur, regimini multorum bonorum, quod *politia* vocatur, præpoſuerat, monarchiam quod ſolum unius principis regimen eſt, regimen eſſe optimum judicavit. Et ſicut regimen illud ſub bono principe optimum, ita ſub malo quod *tirannidem* ipſe ibidem appellat, peſſimum eſſe regimen arbitratus eſt. Quare finaliter ibidem optare videtur ut ſic diſponeretur regni gubernatio ut regi tirannidis ſubtraheretur occaſio, ſimul et ſic temperetur ejus poteſtas ut in tirannidem defacili declinare non poſſit; quibus verbis nedum bonum eſſe populum regi legibus in quas ipſi conſentiunt, ſed et regis politice dominantis imperium ipſe non infimè laudare et approbare probatur: dum rex talis ſecundum leges et conſuetudines regni ſui procedens defacili verti non poterit in tirannum, et taliter regere populum regiæ non poteſt obeſſe libertati, ſicut nec confirmatorum Angelorum in gloriâ libertati obſtat arbitrii quod optare nequiunt ipſi jam peccare. Quare concludi poterit incunctanter quod non minoris potentiæ aut libertatis eſt rex politicè dominans, qui legibus regni ſui ad juſtitiæ cenſuram firmiſſime eſt aſtrictus, quam rex regaliter imperans, qui frena non patiens libere cum velit poterit petulari, dum poſſe peccare potentia non ſit: nec lex politica aſſenſû populi optime inſtituta minoris eſt efficatiæ aut virtutis quam lex regalis ab optimo principe æquiſſime promulgata.

Cap. XXVII.

Jus Regis poteſtas regis eſt, quæ cum fecerit contra Jus Naturæ nunquam evaſit pœnam.

JUS regis, quod populo Iſraeli Propheta explanavit, ad regem relatum non aliud eſt quam poteſtas regia quam regaliter dominans exercere poterit ſuper populum ſuum; ſed cum ad populum jus illud referatur lex ſemper illis eſt, quandoque vero bona quandoque vero mala. Sed cum deteſtabile ſit peccatum regem opprimere populum ſuum, cur poteſtas ſic faciendi jus regis appellata ſit convenit indagare, ne hoc verbum, *jus*, actus regum ex Prophetæ ſententiâ videatur juſtificare nepharios, quod abſit, cum dicat Eccleſia, "Qui mala egerunt ibunt in ignem æternum." Deinde quali er lex dici poterit illud quod iniquum eſt etiam percunctemur. Quare in hiis ſic procedimus; ſicut prædium quod michi datur jus meum dicitur, ſic poteſtas quæ regi datur jus regis recte nuncupatur, ſub quali loquendi modo leges dicunt hominem ad aliquid faciendum vi compulſum tunc non fuiſſe *ſui juris*, id eſt ſuæ poteſtatis, et mulierem viro in matrimonio copulatam non eſſe ſui juris, quia poteſtati viri ſubjecta propriâ non regitur poteſtate. Quare idem fuit dicere, "predic populo jus regis," et, "prædic eis poteſtatem quam exercere poterit rex cum fuerit ſuper eos conſtitutus." Et licet rex iniquus poteſtate illâ inique poſſit fungi, poteſtas ipſa bona ſemper eſt, nec regnantis ab uſu poterit maculari, cum a Deo ſit omnis poteſtas, a quo et omne bonum. Diffamari tamen quodammodo poterit dignitas illa contagiore principis iniqui, ſicut et princeps iniquus merito ſit famoſus, dicente Boetio, "quanto major eſt dignitas tanto diſpexiores improbos facit, nec impune reddunt enim improbi parem dignitatibus vicem quas ſua contagione commaculant." Pilati namque poteſtas quam ipſe male excercuit, ſimiliter et Diaboli qui ſemper exſtat malus, ſemper erant bonæ. Nam vitium in poteſtate non eſt ſed in animo abutentis; ſic libero arbitrio, quod bonum eſt, ſepius abutimur, et poteſtate regiâ, quæ preſtantiſſima eſt et jus regis appellatur, improbiſſimi quam plures regum, ſi reges dici debeant, in ſubditorum perniciem abutuntur. Abſit tunc ſapere quod rex tyranniſans in ſubditos legittime agit, licet poteſtatem a Domino receperit quâ poſſit in eos ſic ſævire; aut quod Pilatus juſte Chriſtum necaverat, quamvis a Domino data fuerat ei poteſtas eum trucidandi. Achab quondam rex Iſrael jus regium habuit, quod proclamavit Propheta, tamen cum vineam Naboth ſubditi ſui ipſe injuſte abſtulerat, propheta Helias pro ſcelere illo turpiſſimam mortem ſibi comminatus eſt. Sic et David regem Iſrael in Uriam ejus ſubditum delinquentem propheta Nathan ſub paradigmate horrendo acerbiſſime increpavit; ac, ut dicit Jeronimus in Gloſſâ ſuper xix. C°. ſecundi libri Regum, quia ipſe David injuſte hereditatem Mephiboſeth nepotis regis cum ſerviente ſuo dividebat, Dominus regnum ipſius David inter ejus nepotem et ſuum ſubditum etiam partiebatur; ac licet predictus Achab viſus ſit erga Naboth predictum non regaliter ſed politice quodammodo proceſſiſſe, dum non

poteſtate regiâ voluit auferre vineam ejus, ſed ſibi optulit viniæ pretium, et, cum nec ſic illam nanciſci poterat, proceſſu legis per teſtes productos et ſententiam judicialiter in Naboth latam vineam optinuit, tamen quia factum illud contra legis naturæ decretum, quod nulli permittit alteri facere quod ſibi fieri nolit, efficiebatur, rex ipſe acerbiſſimâ comminatione predictâ Domini mandato perterritus eſt. Nam nullum regis edictum aut factum etiam ſi politice emanaverit, ſi contra legis naturæ regulam fuerit egreſſum, unquam divinæ animadvertionis ultionem eſt evaſum.

Cap. XXVIII.

De legibus iniquis et tyrannis.

Est quamvis, ut dicunt Leges, "quod principi placuit legis habeat vigorem," quo illud *lex regia* debeat appellari, lex ipſa tamen ſepius mala eſt, ut fuerat Herodis edictum quo pueri in Bethlem et in omnibus finibus ejus necati ſunt: principis namque placitum illud fuit, quo nomen legis ſortitum eſt, illâ tamen lege nichil nequius potuit cogitari. De conſimili lege locutus eſt Apoſtolus cum dixerit, "Inveni legem in membris meis legi mentis meæ repugnantem et captivum me ducentem in lege peccati quæ eſt in membris meis." Ecce legem carnis et ecce legem peccati! ambas tamen leges vocat Apoſtolus licet iniquiſſime fuit: ſic et poteſt princeps inique regens dicere de iniquâ lege ſua, videlicet quod ipſe invenit legem in mente ſuâ legi naturæ repugnantem, et eum captivum ducentem in lege peccati quod in voluntate ſuâ tunc reſidebat. Nam ſicut illa imperioſa virago, libido videlicet, in carne hominis petulans a poetis vocatur tyrannus naturæ, ſic rex luxu dominans et opprimens ſubditos eorumdem tyrannus vocari meretur. Tyrannus enim a *tyro* dicitur quod eſt *fortis*, vel *anguſtia*, quaſi *fortitudine anguſtians* ſubditos ſuos: et eſt tyrannus, ſecundum Sanctum Thomam in predicto libro De Regimine Principum, omnis princeps qui ad propriam dominatur voluptatem et non ad utilitatem populi ſui. Hic profundiſſimum acerbiſſimum que locum occupabit in pœnis: de qualibus principibus ſcribitur in libro Sapientiæ, "Judicium duriſſimum hiis qui præſunt fiet, exiguo etenim conceditur miſericordia, ſed potentes potenter tormenta patientur."

Cap. XXIX.

Epilogium diſputationis inter Jus Naturæ et Jus Regis.

Tempus jam protelati noſtri ſermonis impatiens interpellat ut tractatui quem cum jure regio inivimus finem ſuccinctius imponamus: quare expediens eſſe jam decernimus, ut quid in hoc tractatu tam prolixo profecimus quaſi in acervum quendam congeramus et, factâ inde computantium more ſummâ totali, ſi quid adhuc reſtet quod

impugnantium arcem noſtram animos commoveat id clarius emineat; ut tunc et illud ſi poterimus etiam propellamus, quo obſidentium furias pacare poſſemus et arcis diſſipare vallum, ut inſultantes quique poſſint cum gaudio ad propria remeare. Primo namque jus regium quod Propheta populo explanavit non omnium regum jus eſſe ſed eorum tantum qui in ſubditos regali dominio principantur, quales fuerunt reges gentium quibus populus Iſrael voluit conformari, diſtinctione perſpicua declaravimus, quo jus regis regaliter et politice preſidentis, quod ſemper legis naturæ patitur regulas, docuimus alienum eſſe ab hoc conflictu; minoratoque ſic labore certaminis noſtri, oſtendimus legem regiam lege regali et politicâ, quæ ſic ſub legis naturæ manu ſe humiliat, non eſſe potiorem, quo ut legi regali et politicæ, ſic et legi tantum regali convenit naturalis legis ſubire mandata. Magiſtatem etiam et auctoritatem legis naturæ maximas eſſe pandimus, cum legem illam nedum in Paradiſo innocentiæ tempore mediante gratiâ hominem rexiſſe, ſed et in exilii hujus heremo eundem retulimus conſimiliter gubernaſſe, nec hominem unquam deſeruiſſe juſtum vel injuſtum; quo ſempiternum legem illam eſſe probavimus, et mutato hominis ſtatu ipſam nunquam ex toto mutatam: omnia etiam juris regalis decreta cum erraverint docuimus legis naturæ debere regulis reformari, ſic et politicæ legis normas et conſuetudinum ac conſtitutionum ſanctiones caſſari debere probavimus, quoties a legis naturæ diſſenſerint inſtitutis, quam matrem eſſe et dominam ſuperius diffinivimus omnium legum humanarum. E regione de jure regio fati ſumus, quod illuc non in Paradiſo aut ab exordio rationalis creaturæ ut lex naturæ originem ſumpſit; ſed poſt quam peccato contaminata eſt natura hominis et originalis innocentiæ munditiâ deſtituta ſub regibus paganis in terrâ, jus illud prorupit ab homine editum et ejus inconſtanti voluntati ſubjectum, quo ejus arbitrio mutabile et mutatum, quandoque bonum operatum, multotiens vero malum; hujus autem inconſtantis conditionis pretextu, jus iſtud ad regendum inconſtantem populum ſtolidum et ingratum, qui poſtulatione regis Deum ad iracundiam provocavit, regi videlicet Iſraelitico ex ſeveritate quâdam divinâ diſtributum eſt. Quid tunc ſe comparat jus tale legi naturæ? An comparatio aliqua muſcæ ad aquilam, aut calpæ cœcæ ad lincem fieri poſſit? Verum et ſi poſſit, diſſimilius multo eſt jus regium legis naturæ dignitati. Hæc Lex Naturæ a ſolo Deo oriunda ſoli legi ejus ſubjecta eſt, ac ſub illâ et cum illâ mundum regit univerſum, quo illi ſerviunt cunctæ aliæ leges, ut non ſit in terra ab homine edita quæ non legis naturæ pareat inſtitutis: hæc nunquam errore ſeducta deliravit, hæc nunquam ex toto mutata eſt, ſed, ut ſupra oſtenditur, immutabilis, etſi per peccatum leſa, perſeverat. Lex Dei ut mater filiam ſemper regit illam, cujus divinæ legis mandata ipſa nunquam præterivit. Unde ratione ingenuitatis et originis ſuæ, ac ratione ſuæ dignitatis, poteſtatis, et magnificentiæ, ordo naturæ depoſcit ut ei differatur ab omnibus legibus quæ leges dicuntur humanæ. Cedat ergo ei Jus Regis ut dominæ et majori ſuæ, nec amplius comparando ſibi cœquari preſumat. Hæc audiens Propheta cum omni exercitu ſuo regum et omnium legum ipſorum ſic exorſus eſt. "Recedamus ab hiis ſedibus, nec arcem hanc diutius impugnemus; hæc eſt enim Sion turris David, inexpugnabilis hic thronus miſticus Salamonis; hic ipſe litigantium

Concluſio certaminis regiæ cum lege naturæ

meretricum ſopivit lites, hic prudentiſſimæ reginæ enigmata ipſe abſolvit, et gratia afflatus divina parabolarum ſcripſit tria milia, hic, ſpreto mundi faſtu vanitati comparato, deſiderare ipſe didicit oblectationiſque amplexu Sapientiam oſculari, quæ legis naturæ eſt creatrix. Quid amplius? vere Dominus eſt in loco iſto, hic nihil aliud eſt quam domus Dei et porta initialis Cœli. Nam hic Jacob ſpiritu Dei revelante habens ſub capite petram, vidit ſcalam ſtantem ſuper terram, et cacumen ejus tangens cœlum, et Angelos Dei aſcendentes et deſcendentes per eam, nam et Dominum vidit innixum ſcalæ. Vere arx iſta non eſt turris Babilonis, ſed eſt directa ad cœlum ſcala, cui innixus Dominus fidem et gratiam per aſcendentes et deſcendentes angelos homini quieſcenti ſuper petram, quæ eſt Chriſtus, infundit." Et hiis dictis Propheta obſidionem turris diſſolvit, quo facto pax, quæ, ut ait Sanctus Auguſtinus, tranquillitas ordinis eſt, juſtitiam oſculata eſt, et Lex Regia cognovit ordinem ſuum et quievit in eo. Quare et unuſquiſque obſidentium pacatus abiit in regionem ſuam.

Cap. XXX.

Differentia inter jus et legem.

JAM quia in prætractatis legem quam ad diſcidendam queſtionem prepoſitum eligimus, aliquando *Legem* naturæ, aliquando *Jus* naturæ nominavimus, expediens videtur ut cur terminos noſtros ſic alternamus, vel confuſe proferimus, declaremus; ne terminos confundentes pariter confundamus et materiam quam tractamus. Certe mentem noſtram hucuſque non exceſſit, quin jus ſe habeat ad legem ut genus ad ſpeciem; nam jus a juſtitiâ dicitur, et eſt omne id quod æquum et bonum eſt: ſed non omne illud eſt lex: tamen omnem legem ſemper æquam et bonam eſſe oportet, alioquin non ſpecies eſſet juris; ſic ergo omnis lex jus eſt, ſed non omne jus legem convenit appellare; repetens namque ſua quiſquis coram judice jus habet, ſed non legem ea repetendi; lex remanet judici quâ ipſe auctori reddi diſcernet ea quæ poſtulat, et illud faciendo jus ſibi reddit et legem. Lex, ut quidam ſentiunt, *a legendo* dicitur, et eſt ſanctio ſancta jubens honeſta et prohibens contraria: ſed hæc eſt lex *ſtatuti* quæ ſcribi ſolet cum ſanctiatur, ſed *conſuetudinis* lex non ſanxcitur nec ſemper ſcribitur. Et ſi conſuetudo ex principis mandato litteris commendetur, deinceps conſuetudinis nomen in nomen conſtitutionis ipſa transformat, et ex tunc acrius ſolito plectit delinquentes propter mandatum principis tunc contemptum. Igitur lex conſuetudinis litteras neſciens et lex naturæ quæ tot milibus annorum ſcripturam non ſenſit a legendo non dicuntur, ſed *a ligando*, quia ligant et non ſemper leguntur. Et ſi dirivatio nomen legis neſciat ſic oriri, Ethimologia tamen, quæ *lapidem* quaſi *lædentem pedem*, et *pigrum pedibus ægrum* dicit, legem quaſi *ligam* poſſe dici non renuet affirmare. Unde lex dici poteſt juris vinculum quo quis conſtringitur facere aut pati quod eſt juſtum. Et licet lex, ut predicitur, ſit ſpecies juris, ipſa tamen ſic deſcripta eſt genus ad legem naturæ, conſuetudinum, et ſtatutorum, ac ad

cunctas leges ſpeciales et privatas, quarum, ut ſuperius memoratur, numerus eſt adinſtar acervorum lapidum arborum ve ſilvarum. Igitur quotiens in hoc Tractatu loquimur de hiis quæ ad juriſdictionem pertinent, legis vel juris nomine utimur abſolute; ſed cum fit ſermo de alicujus rei poſſidendæ vel habendæ titulo, aut hujuſmodi quæ juriſdictionem non reſpiciunt, jus et non legem nominamus. Nec admiretur legens hæc et premiſſa, ſi tantis digreſſionibus diſciſionem propoſitæ queſtionis protelemus, cum mulier nimis accelerata ad partum ſæpe abortivum pareat, aut erumpnarum multitudine mortis periculo ſe exponit. Et ideo ut partus hujus gravidæ queſtionis concedente Domino naſcatur incolumis, et mater minoribus affligatur erumpnis, Tractans tanto magis ſe dilatat, ut ſi impugnantium emulatione pericula ingruant matri aut proli, reperiantur in hoc Tractatu antidota quibus eiſdem mederi poſſit, cum non ſemper Scribens ſe poterit preſentem exhibere, quando ejus delatores ſua vomont occulte venena.

Cap. XXXI.

VIRES auctoritatem que Legis Naturæ jam intelligimus, ſed ſpeciem ejus non dum videmus: quo non minimum formidamus ne lex quævis alia, nomen ejus aſſumens, in hujus examinis tribunal aſcendat: per quod nos cauſam hanc coram eâ ventilantes quæ judex competens non exiſtat ſudaremus incaſſum. Quare expedit ut quæ ſit hæc lex naturæ quam tam feſtine preconiſavimus diligenter inveſtigemus; ut agnitâ ejus ſpecie declinare poſſumus omne forum judicis peregrini; ſed quibus mediis ſpecies ejus agnoſci poterit dubio urgemur ingenti. Tullius in exordio libri ſui De Officiis dicit, quod omnis quæ a ratione ſuſcipitur de aliquâ re inſtitutio debet a diffinitione proficiſci, ut intelligatur quid ſit id de quo diſputetur; tamen ſi de lege naturæ diffinitionem ejus interrogemus, diffinitio illa genus legis, ſed non ſpeciem nobis revelabit; quia deſcriptio juris naturæ generalis legem naturæ quâ diſciduntur lites quam nos querimus non ſegregat a lege naturæ quâ procreatur proles, lege etiam quâ fœtus et partus ſuos omnia ſentientia faciunt, nec a lege quâ nidificant aves pullos que educant et ſimilibus, cum ipſa deſcriptio omnes has leges ſub uno contextu amplectatur, dicens, "Jus naturale eſt quod natura omnia animalia docuit." Quid obſcurius indiſtinctius ve dici poterit ut non una legum ſpecies diſcernatur ab aliâ, quum omnes eas ſic paſſim in uno quaſi faſciculo complectitur? Species eſt quam querimus et non genus: genus namque cauſas hominum judicare non poterit, ſed ſpecies, immo verius aliquid individuum ſpeciei. Et nunquid difficultas Samueli prophetæ non minima fuit, placidiſſimum Deo qui regeret populum Iſrael de filiis Jeſſe eligere, cum ſeptem de filiis ejus in domo una inveniret? Major vero difficultas eſt multo, unam de tot ſpeciebus quas continet jus naturæ eligere ad regendum orbem. Quid ſi Senſualitas, quæ ſub hac diffinitione complectitur et primogenitus humanæ naturæ eſſe videtur, ut Eliab primogenitus Jeſſe, adducitur coram Propheta ut ungatur ad regendum populum? Credo quod diceretur de eâ quod de Eliab dictum

Diffinitio legis naturæ in genere quo ipſa cuncta regit animantia.

I. 25. b.

eſt a Domino, "ne reſpicias vultum ejus quoniam abjeci eam." Et ſi ſecunda, ut Abinadab filius ſecundus Jeſſe, adducatur coram Propheta Ratio, videlicet naturalis, quam poſt ſenſualitatem ſecundam gignit humana natura, nunquid diceretur de eâ ut de Abinadab dixerat Spiritus, "nec hunc elegit Dominus?" et ſic de aliis viribus et potentiis quas natura omnes homines docuit, ut de hiis omnibus dicatur quod dictum eſt de ſeptem filiis Jeſſe, "Non elegit Dominus unum ex iſtis." Sed tamen poſt hæc Jeſſe ait ad Prophetam, "Adhuc reliquus eſt parvulus et paſcit oves:" cui dixit Samuel, "Mitte et adduc eum;" ſed quis nuntius in hoc negotio pronior quam Ratio poterit inveniri? ipſa namque taliter diffinitur: "Ratio eſt vis animi divinum participans lumen quæ neceſſario infert veritatem." Sed quam veritatem jam poterit illa inferre niſi veritatem juſtitiæ? Et nunquid eſt ipſa noſtra lex naturæ quam querimus? Canones vero Spiritu Sancto afflati Sanctorum etiam vallati ſcripturis legem naturæ vocant veritatem; ubi eam ſupra conſuetudines extollunt, dicentes, "Veritate manifeſtatâ cedat conſuetudo veritati" (viij. Di. C°. de Veritate) et ibidem, "Nemo conſuetudinem rationi et veritati præponat, quia conſuetudinem ratio et veritas ſemper excludunt." Ac in eâdem Diſtinctione (C°. *Fruſtra,*) ex ſententiâ Sancti Auguſtini ſcribitur ſic, "Fruſtra quidem qui ratione vincuntur conſuetudinem nobis objiciunt, quaſi conſuetudo major ſit veritate." Ecce quomodo illæ ſacræ ſcripturæ legem naturæ non alio quam veritatis nomine deſignant, et quomodo ipſæ affirmant rationem liquide poſſe oſtendere veritatem! Quid tunc aliud poteſt eſſe Lex Naturæ quam *juſtitiæ veritas quæ recta ratione poterit revelari?* Invenimus jam, ſacris nos informantibus Canonibus, qualiter lex naturæ juſtiſſime poterit diffiniri, cum diffinitio, ut ait Januenſis in ſuo Catholicon, ſit terminus demonſtrans quid ſit eſſe rei. Quare videtur quod lex naturæ ſic ſe habeat ad rationem ut centrum ad circunferentiam ſuam. Circulus verus centrum demonſtrat, ſed verius centrum ſuæ orbis indicat veritatem, ſic et recta ratio legem naturæ revelat, ſed certius lex illa oſtendit certitudinem rationis. Adductus eſt ut eſtimo jam de agro reliquus ille parvulus qui paſcit oves, David videlicet manu fortis qui regere poſſit populum Iſrael; ipſe eſt pulcher aſpectu et decorus facie (primo Regum xvj. C°.); ſic et hæc Juſtitiæ Veritas quæ jam noſtra venit Phroneſis, decora eſt facie et venuſta aſpectu; de qua Sorobabel ait quod ipſa fortior eſt rege, vincit, valet, invaleſcit, et in eternum vivit, et optinet in ſæcula ſæculorum (ij. Eſdr. v°. C°.)

Diffinito legis naturæ in ſpecie qua ſolum ipſa regit humanos actus.

Cap. XXXII.

De malicià detrahentium predictis retorquenda.

DUOBUS jam ſcopuloſis valde concutitur animus premiſſa ſcribens: primo ne quiſpiam dicat, Ecce iſte qui legem naturæ diſcripſit, primitus non niſi *quæ* ſit lex illa queſivit, et jam *quid* ipſa ſit ille diffinivit; de ſpecie interrogavit et ſubſtantiam modo deſcribit. Quis, ſi de duobus viris an eorum alter ſit Johannes fuerit ſciſcitatus, contentaretur, ſi ſibi fuerit reſponſum, "ille quem tu queris eſt animal bipes rationale," cum

licet ambos bipides reſpiciat, et eorum ſermonibus intelligat eos eſſe rationales, Johannem ab altero per diſcriptionem illam non ſecernit, nam ſpecies Johannis demonſtratione et non diffinitione cognoſcitur? Sic demonſtratione magis quam diffinitione nedum ſpecies legis naturæ oſtendi poterit, ſed et eo medio congruentius reſponderetur queſtioni Scribentis. Secundo, videtur Scribentem temeritatis maculâ poſſe notari, cum ipſe legem naturæ quâ actus reguntur humani, quam nobiliſſimæ Leges illæ Civiles quæ quaſi totius mundi curam tamdiu egerunt ſpecialiter deſcripſiſſe non leguntur, deſcribere jam ſit auſus. Quid hiis duobus poterit Scribentem majori impudentiæ et temeritatis crimine diffamare? Scribens igitur iſta verens, et licet ampliſſimum colendum habeat arvum, boves ſuos pauliſper jam ſubſiſtere compeſcet, donec offendicula iſta ab aratri ſui ſulco amoverit, ne inſtrumento illo ab eis quaſſato agri ſui cultus retardetur. Et ad primum dicit quod corporalia et ſenſibilia certius demonſtratione quam diffinitione cognoſcuntur, nam eorum agnitio ortum habet a ſenſu, ſed intellectualia et incorporea, dum illa inquiſitione intellectus agentis adquirantur, magis nobis diffinitionibus quam demonſtrationibus patefiunt. Quare rethorici perſuaſiones et non demonſtrationes ad ſuas concluſiones oſtendendas exquirunt, cum intellectuale veriſimile ſit quod probare nituntur; ſed mathematici demonſtrationibus utuntur cum aliquid concludant, eo quod corporale neceſſarium eſt quod oſtendunt. Et ſi quis formam prefignati Johannis ſenſibus ſemel apprehenderit, deinde elongatâ perſonâ ejus a corporis ſenſu, quid tunc aliud ſibi retinet intellectus de toto quod ipſe percepit, niſi tantum diſcriptionem ſpeciei, aut ſubſtantiæ ejus quem ſenſus eidem intellectui demonſtravit? Unde licet aliquod ſuppoſitum corporale ut Johannes melius poſſit agnoſci demonſtratione quam deſcriptione, nihil tamen intellectuale, ut ſcientia, lex, virtus, et hujuſmodi, ita poteſt demonſtratione ut deſcriptione, et maxime diffinitione cognoſci. Demonſtratur tamen lex quam nos deſcripſimus, vel verius diffinivimus, deſcriptione predictâ, cum ipſa dicat quod recta ratio nobis legem naturæ revelat; unde illi quibus diffinitio illa non placet ut diffinitio, utantur eâdem ut deſcriptione, vel demonſtratione, quia ut credimus utrumque nomen ipſa meretur.

Et ad ſecundum dicat Scriptor predictus quod Lex Civilis, quæ, ut dicitur, tam diu quaſi univerſi orbis curam geſtit, tantis ſolicita miniſteriis ſingula particularia quæ hominis ſcire gliſcit animus enodare non curavit, ſed quamplurima ad excercendum reliquerat ſtudioſos, et forte reverentiæ cauſa Legem Naturæ, quæ eam edidit, ipſa noluit infra deſcriptionis clauſtra recludere: quare liberam eam reliquit et propriis gaudere permiſit habenis. Sed ſancta mater Eccleſia Chriſti ſponſa, quæ non ſemel, ut Johannes, ſupra pectus Domini recubuit quo ipſe tot copioſa ſapientiæ fluenta potavit, ſed ſemper requieſcit in lecto ejus floriſero, lævam ejus habens ſub capite, et dextrâ illius amplexata, præponens legem naturæ conſuetudini et conſtitutionibus hominum, eam ex Sanctorum ſcripturis liquidiſſime demonſtravit eſſe juſtitiæ veritatem quæ recta ratione poteſt agnoſci. Unde tunc poterit Scribenti temeritatis crimen imponi, cum ipſe de ſuæ inventionis auſu, proprio innitens ingenio, nichil in hiis ſcripſerit, ſed ea quæ ex tantæ matris hauſit uberibus de ſuæ plenitudine caritatis eructavit?

cum dicat Salomon, (Proverb. i. C°.) "Audi fili mi diſciplinam patris tui, et ne dimittas legem matris tuæ, ut addatur gratia capiti tuo, et torques collo tuo," &c.

Cap. XXXIII.

Cauſa quare Tractans inveſtigat ortum Legis Naturæ.

UBERRIME jam nobis fulgent legis naturæ nedum dignitas et poteſtas, ſed et quæ ac quid ſit illa nobis liquide conſtat; ortus tamen ejus quo nobis ſuæ ingenuitatis claritas patefieret, nondum innoteſcit; hunc igitur amodo perſcrutemur, nam ejus agnitioni non modicus legis illius decor, veneratioque ſuccedent Revelabuntur namque nobis in ejus ſcrutinio quo tempore, quo ſtatuente, et qualiter lex illa mundi ſumpſit imperium, aliaque quamplurima ejuſdem legis inſignia preconia que clareſcent, et finaliter nobis hujus legis nobilitas et omnia ejus cariſmata inde luculentiſſime redundabunt. Quare jam legis illius natalitia rimari nullatenus pigritemur.

Cap. XXXIV.

Qualiter ſoli viro promiſſa eſt Prelatura mundi antequam homo crearetur.

LEGITUR in Geneſi quod, ſexta die a mundi creationis exordio, terrâ herbis et arboribus, aqua piſcibus, aiere avibus inſtauratis, conditis que jumentis, beſtiis, et reptilibus, ait Dominus "faciamus hominem ad ymaginem et ſimilitudinem Noſtram, et preſit piſcibus maris et volatilibus cœli et beſtiis terræ univerſæ que creaturæ omni que reptili quod movetur in terra." Ex quibus verbis perſpicue erudimur quod duo nondum facta Divina tunc ſanxit Providentia fore facienda, hominem videlicet et officium, *prelatam* et *prelaturam*, miniſtrum ſcilicet et miniſterium ejus, quibus ſub Deo mundus conditus regeretur. Non enim ait Dominus, "faciamus hominem *ut* præſit piſcibus maris etc." quaſi quod præſidentia illa eſſet finis hominis faciendi, qui Deo frueretur, quo Deus eſſet finis ejus qui et principium illius fuerat tunc futurus; ſed copulative dixit Dominus, "faciamus, hominem *et* præſit piſcibus maris ac univerſæ creaturæ:" quo ſignanter hominis eſſentiam Dominus diſtinxit ab ejus officii dignitate, non ut unum ſine altro eſſe deberet, ſed ut homo velut ſubſtantia et officium illud velut accidens ſemper inſimul permanerent. Subjectum tunc et accidens facturus erat Dominus, non ut omne accidens quod adeſſe et abeſſe poterit, veluti pietatem miſericordiam et hujuſmodi virtutes, quæ conſiſtunt in hominis voluntate, non tamen naturâ ſed gratiâ et Dei bonitate, quibus inter alia redimitus fuerat primus homo factus ad ſimilitudinem Dei, ſed accidens indelibile et naturale homini, quod ita ſuæ naturæ inditum foret et unitum ut nedum voluntarium ut virtutes predictæ, ſed et neceſſarium veluti

obedientia, quam, ſi nolit homo, ſubire conſtringitur, naturæ humanæ nexû perpetuo cohereret. Sic que duo ſtatuit Dominus ſe tunc facturum, hominem, ut predicitur, et officium, quibus ipſe Deus mundum conditum gubernaret. Nam quid aliud eſt preeſſe univerſæ terræ et animantibus ejus niſi officium quoddam regendi terram et omnia quæ continentur in eâ, cum non tunc ſanxerit Dominus primum hominem ſolum futurum dominatorem terræ, ſed dominium terræ homini illi ac mulieri, quam de eo ipſe erat formaturus, Dominus tunc et in creatione hominis illius reſervavit eidem homini ac mulieri in communi poſtmodum conferendum? Unde ſoli viro hoc officium regendi orbem conceſſum eſt; nec officium illud *dominium*, ſed *prelaturam* congruit apellare, cum ex Dei decreto vir ad illud non ut dominaretur ſed ut preeſſet fuerat tunc prelatus. Sic namque et Eccleſia regentes ejus dominia *prelatos* nominat, et non dominos, cum dominia illa Eccleſiæ conſtent, et non ſint domini eorum omnes illi qui ea regunt aut qui eiſdem præferuntur. Tamen Sanctus Thomas in Primâ Secundæ Queſtione lxxxxvj. Articulo iiij^o., et etiam in tertio libro De Regimine Principum, dicit quod dominium duplicitus poteſt accipi, uno modo prout quis dominatur alteri ut ſervo, quod fit quando eo utitur ad utilitatem et bonum ipſius dominantis, et iſtud dominium introductum fuit per peccatum, quare tale dominium non habuiſſet homo ſuper hominem in ſtatu innocentiæ; alio modo poteſt accipi dominium prout eſt officium gubernandi et dirigendi liberos ad eorum bonum, vel ad bonum commune, et illud dominium eſt naturale, quale dominium habuiſſet homo in ſtatu innocentiæ, eo quod homo eſt animal ſociale et politicum, et non poteſt in ſocietate vivere ſine aliquo præſidente et regente, ut tradit Philoſophus in primo Politicorum. Et ſimiliter ſi unus homo habuerit ſupereminentiam ſcientiæ aut juſtitiæ, inconveniens fuiſſet ſi illud non cederet in commodum aliorum. Quare ſcribitur primâ Petri iiij. C^o. "unuſquiſque gratiam quam accepit in alterutrum illam adminiſtrantes." Et Auguſtus in xix li^o. De Civ. Dei, dicit, quod juſti non dominandi libidine imperant ſed officio conſulendi. Et cum dicat Apoſtolus quod ea quæ a Deo ſunt ordinata ſunt, (ad Ro. viij.), et ordo ſit, ut ait Auguſtinus, "parium diſpariumque rerum ſua cuique tribuens diſpoſitio," ſi non eſſet inequalitas in ſocietate humanâ, ordo ſocietati illi non ineſſet, quia inequalitatem nomen ordinis importat. Sic igitur innocentiæ tempore ordo, qui decor eſt univerſi, exigebat ut homo homini præſideret; ſic que in ſtatu integro humani generis homo hominem direxiſſet, vir uxorem, pater filium, majus ſapiens minus ſapientem conſulendi officio gubernaſſent. Quare et Philoſophus in primo Politicorum dicit, quod vigens intellectû et induſtria eſt naturaliter dominus, et pollens viribus et difficiens intellectû eſt naturaliter ſubditus: unde accipiendo dominium predicto ſecundo modo, per Sanctum Thomam declarato, prelatia quam habuit primus homo ſuper ceteras creaturas recte poteſt dominium appellari; nec tamen hoc efficit ut dominium illud non etiam prelatia nominari poterit, cum idem dominium officium ſit et dignitas creaturis omnibus preeſſendi. Sanctus tamen Auguſtinus, in predicto xix. libro, preeminentiam et dignitatem quam habuiſſet homo ſuper hominem tempore innocentiæ videtur indignari vocare dominium: nam ipſe ibidem

dicit, "rationalem creaturam factam ad ymaginem ſuam noluit Dominus niſi irrationabilibus dominari, non hominem homini, ſed hominem pecori." Hæc ille. Igitur aptiſſime et abſque cujuſque contradicentis indignatione videtur nos poſſe dignitatem ſummam et officium primi hominis prelatiam nominare. Quæ recte conſiderans Johannes Criſoſtomus primum hominem ad officium predictum a Domino prelatum et in eodem conſedentem non dominum ſed præſidem appellavit. Nam ſicut prælatus a conſtituente nomen *prelati* trahit, ſic cum in officio prelatiæ ſederit homo, merito *præſidens* poterit nuncupari. Unde idem Criſoſtomus in quodam Sermone ita de primo homine affatus eſt, "Deus hominem, quem ſecundum poſt ſe præſidem facere diſponebat, plenum fecit et perfectum, habentem in ſe dignitatem quâ præcelleret, et poteſtatem quâ cunctis animantibus imperaret, ut imperaret mundo et ſerviret Deo, a quo ſibi cuncta fuerant ſubjugata."

Cap. XXXV.

Providentia Divina prælaturam mundi, et juſtitiam inſimul ſanxit faciendas.

Ex hiis verbis Criſoſtimi liquet primi prelati fuiſſe officium, cuncta rexiſſe animantia terræ et eiſdem rectiſſime imperaſſe, ad qua facienda poteſtate plenus ipſe erat, et dignitate perfectus. Sed cum ipſe ad eadem perficienda plenus et perfectus eſſe non potuerit, ſi juſtitiam, quæ regula forma que regendi eſt, non habuerit, dum plenum et perfectum eum eſſe ad regendum mundum Criſoſtomus dixit, ipſum et juſtitiam habere, quâ ſic facere poſſit, etiam non dubium ipſe arbitratus eſt. Leges namque civiles dicunt quod conceſſo uno conceduntur et omnia ſine quibus illud fieri non poteſt; ſed ſine juſtitiâ mundus regi non potuit; quare cum ejus regimen homini a Domino fuerat commiſſum, etiam et juſtitiam homini tunc fuiſſe conceſſam, eſt neceſſe confiteri. Quod nedum ſic incluſive ſancitum, ſed et poſtea fuiſſe peractum ſapientiſſimus ille Salamon conſiderans in Eccleſiaſte ait, "Solum modo hoc inveni, quod fecerit Deus hominem rectum;" non enim rectus factus eſt qui non habuit rectitudinem, ſic nec fortis qui fortitudine non potitur, aut quomodo ſanus judicari poterit quiſpiam qui ægritudine prægravatur? Rectitudinem igitur habuit primus homo in creatione ſuâ quem rectum tunc fuiſſe Salamon ſic declarat. Sed an rectitudo illa juſtitia fuerat, quæ omnis regiminis forma eſt et regula, ulterius convenit indagare. Anſelmus vero diffiniens juſtitiam ait, quod ipſa eſt "rectitudo voluntatis propter ſe ſervata:" et cum diffinitionem convertibilem eſſe oporteat cum diffinito, ſi juſtitia ſit rectitudo voluntatis, voluntatem rectam juſtitiam eſſe neceſſario concedetur. Quare et leges civiles dicunt quod juſtitia eſt "conſtans et perpetua voluntas jus ſuum unicuique tribuens." Quo ſequitur quod primus homo cum ipſe creatus fuerat rectus, voluntatem habuit conſtantem et perpetuam, jus ſuum unicuique tribuentem: et per conſequens ipſe habuit juſtitiam per quam ille mundum regere potuit univerſum et ſic præeſſe omni creaturæ. Ac quod ipſe in ſuæ creationis initio talem habuit voluntatem,

et quod omnia predicta rectiſſime ſunt concluſa, Sanctus Auguſtinus in xiiij. libro de Ci. Dei, eadem quaſi ſub unâ complectens ſententiâ, affirmat dicens, "fecit Deus hominem rectum, ac per hoc voluntatis bonæ: non enim rectus eſſet bonam non habens voluntatem: bona igitur voluntas opus eſt Dei, cum eâ quippe ab illo factus eſt homo." Hæc ille. Nec hiis obſtat quod primus homo legem Divinam tranſgrediens voluntatem habuit non rectam ſed iniquam et inconſtantem, quo nec ipſam dicere poſſumus fuiſſe perpetuam quæ etiam unicuique jus ſuum non tribuit, dum ipſa Domino Deo abſtulit quod erat jus ſuum. Nam voluntas illa quâ primus homo tam perperam operatus eſt, non erat voluntas illa quæ ſibi a Domino collata fuit, quam et juſtitiam fuiſſe eſt ſuperius diffinitum, ſed voluntatem illam bonam primus homo deſeruit, cum voluntate ſuâ, quam iniquam ipſe fecerat, tam ſceleſtum facinus ille commiſit: non enim ad meritum ejus prima voluntas quam Dominus ei contulit, ſua voluntas dici potuit, ſi non eam cum voluerat ipſe deſerere potuiſſet: ipſa vero voluntas prima conſtans et perpetua fuit, quia non niſi conſtantia et perpetua ipſa volebat, licet eam homo primus inconſtantis voluntatis ſuæ ſtimulo repudiaverit: ſic que voluntas cum quâ primus homo tam inique mæchatus eſt, non illa fuit voluntas quæ juſtitia diffinitur, ſed alia quæ non juſtitia ſed injuſtitia vocari meruit. Nam rectitudinem ipſa non habuit quam Anſelmus juſtitiam eſſe diffinivit, de quâ poſt pauca in ſubſequentibus eſt clarius diſſerendum.

Cap. XXXVI.

Juſtitia et Jus Naturæ unius qualitatis ſunt et accidentalis eſſentiæ.

SED nunquid juſtitia, quam Dominus in formâ predictâ ſtatuit faciendam, eſt lex illa naturæ, cujus initia querimus? Fruſtra profecto juſtitiæ nativitatis modum pandimus, ſi non eâdem explicatione etiam legis naturæ originem quam promere decrevimus revelemus; quod viâ quâ jam gradimur minime faciemus, ſi non juſtitiam legem que naturæ unius eſſe qualitatis et eſſentiæ, licet accidentalis, demonſtremus: quod et ſi fecerimus juſtitiæ tunc origine revelatâ etiam legis naturæ origo pariter eſt oſtenſa. Igitur priuſquam nos ad ulteriora divertamus naturam virtutem que juſtitiæ et legis predictæ, ut ſi unius ſint efficaciæ et virtutis, perſcrutemur. In quo labore primitus unde jus dicatur, ſed potius unde nominis ejus cauſa emanavit, expedit indagare, ut ſi a juſtitiæ tunc profundis ejus emanationis modum rimantes ipſius fortaſſis perfecte naturam nos penetrare continget, quâ agnitâ identitas ejus cum juſtitia, vel diſcrepantia quâ disjunguntur, nobis liquide tunc patebit. Leges civiles dicunt quod *jus* a *juſtitiâ* eſt appellatum (ff. de Juſtit. et Jure.) Sed quid nobis confert in hoc ſcrutinio ethimologia nominis ejus? Ethimologia enim et derivatio, quas grammatica docet, potius vocabulorum quam rerum eruditunt nos naturas: tamen Sanctus Yſodorus in libro Ethimologiarum nonnullas tam legum quam virtutum aliarum naturas ethimologiarum vigore nos informat. Et non eſt

putandum quod inconſiderate nobiliſſimæ leges civiles jus dixerunt eſſe a juſtitiâ appellatum. Quare conjicere merito nos debemus quod ſicut jus a juſtitiâ nominis ſui ſumpſit vocabulum, ita ab eâ ſuæ generationis originem contraxit, quo parentis ſuæ nomine illud meruit inſigniri. Sic *lex* a *ligando*, et *rex* a *regendo* non abſque conſimilis affinitatis cauſâ, quaſi a parentibus ſuis nomina ſortiuntur. Tamen ſi jus a juſtitiâ, ut filium a matris ſubſtantiâ dixerimus eſſe progreſſum, cum filius a maternis finibus elongare ſe poſſit, etiam jus a juſtitiâ poſſe diſtare neceſſario confiteremur, quod cum verum non ſit alterius generationis modum naturamque neceſſe eſt ſcrutari. Non enim relative tunc ut filius ad patrem qui ſecundum ſubſtantiam, ut predicitur, abeſſe poterit et adeſſe, aut abſtractive ut humanitas ab homine quæ aliud ſemper eſt a concreto, dicere poſſimus jus a juſtitiâ nomen preſumpſiſſe, cum jus idem ſemper eſſe cum juſtitiâ probare nitamur, ſed ſicut ſplendor a lumine, ardor ab igne, rivus ſcaturiens a fonte ſuo, ſic jus naturæ a juſtitiâ venit, ut non ſit aliud ab eâ, ſicut nec ſplendor a lumine, ardor ab igne et manans aqua a fonte ſuo. Et ſicut hæ emanationes productiones ve eædem ſunt cum hiis a quibus ipſæ emanunt vel producuntur, ſed quia per eas emanantia illa diverſimode effundunt vires ſuas nomina diverſa illa ſortiuntur; ſic jus naturæ cum juſtitiâ idem eſt in naturâ et ejuſdem qualitatis bonitatis et efficaciæ, licet jus et juſtitia diverſimode unitatis ſuæ virtutes effundant, quo et ipſa diverſa nomina ſortiuntur. Nam ſicut mens humana, ut dicit Auguſtinus v^to^. De Trinitate, notitiam gignit, ac mens et notitia producunt amorem, quo mens ſit quaſi parens, notitia quaſi proles, et amor ab utrâque procedit; ſic juſtitia jus parit, juſtitia et jus producunt equitatem, et ſunt jus et naturalis equitas unum cum juſtitiâ, ut ſunt notitia et amor unum cum mente a quâ fluunt. Quare ſi juſtitiæ ortum perfecte doceamus, etiam legis naturæ genituram pariter et docemus.

Cap. XXXVII.

Naſcitur Jus a Juſtitia ut Filius a Patre in Divinis.

SED ne tam celſa humili, ut ita dicam, ymagine oſtenſa videantur minus reverenter tractari, libet ea ex altioribus ſimilacris quaſi ex nobiliori fonte guſtare. Sanctus Auguſtinus, in libro De Dignitate Conditionis Humanæ, memoriam hominis Deo Patri aſſimilat, intellectum Filio eternaliter genito, et voluntatem, a memoria et intellectu procedentem, Spiritui Sancto effigiat, qui a Patre et Filio ſimul eternaliterque procedit; non quia potentiæ hæc eternæ ſunt ut Deus, ſed quia tres illæ potentiæ ſempiterne operantes Trinitatis eternæ ymaginem in ſe gerunt. Nam ſicut tres Perſonæ in Deo ſunt unus Deus, ita tres illæ potentiæ in animâ hominis ſunt anima una: ut idem Auguſtinus ibidem latius liquidiuſque declarat. Sic et ſupernos illos ſpiritus a quibus hominem Dominus minuit paulominus, Ipſe, ut ſacrum teſtatur eloquium, ſuæ ſimilitudinis ſignaculo venuſtavit. Sic et quaſcumque ceteras ſui operis creaturas de ſuæ pulcritudinis plenitudine decoravit, ut non ſit vermiculus ullus aut creatura tam exigua quæ non gerat ſui veſtigium Conditoris.

Quare jam non ſinimur ſaltem opinari quod Legem Naturæ, quam Dominus poſt humanam ſubſtantiam nobiliſſimam concreavit mundi hujus creaturarum, tanti ſui muneris reliquit immunem. Quo ſicut Omnipotens ipſe tribus dignitatibus tam nobilibus hominem inſignivit, ita cenſendum eſt eum Legem Naturæ quam regulam inſtrumentumque ſuum eſſe voluit ad regendum in temporalibus orbem, tribus nobilibus inſigniis quaſi potentiis et dignitatibus hiis ſimilibus ad ſui ſimilitudinem decoraſſe. Quare ſicut in Deo ſunt Pater generans, Filius genitus, et Spiritus Sanctus ab utroque procedens, qui tres Perſonæ unus Deus ſunt, ita cenſendum eſt quod in lege naturæ ſunt juſtitia generans, jus genitum, et equitas naturalis a juſtitiâ et jure procedens, quæ tres nobilitates, ſicut Dei veſtigia, ſunt una lex naturæ. Nec hujus ſententiæ cauſâ poterit Scriptor de temeritatis crimine reprehendi, cum conſimiliter in creaturis aliis Dominus operatus ſit; nam, ut dicit Philoſophus (De Cœlo et Mundo), "nichil eſt perfectum niſi Trinitas, quia ad perfectionem cujuſcumque rei tria requiruntur, ſcilicet ſubſtantia virtus et operatio." Et idem dicit Dioniſius in libro De Divinis Nominibus. Sanctus quoque Auguſtinus dicit quod in ſole ſunt ſubſtantia ejus, radius, et calor; radius de ſubſtantiâ naſcitur, ſicut filius de patre generatur, calor ab utroque progreditur ſicut Spiritus Sanctus a Patre Filioque ſpiratur; ſol a nullo iſtorum procedit ſicut Pater non eſt genitus nec procedens, et tamen hæc omnia ſunt unus ſol ſicut tres Perſonæ ſunt unus Deus. Conſimiliter quoque in rebus infimis poteſt cerni effigies Trinitatis. Nam fons rivum ſicut Pater generat Filium: et fons et rivus faciunt ſtagnum, ſicut Pater et Filius producunt Spiritum Sanctum; fons vero a nullo iſtorum procedit ſicut Pater a nullo exiſtit; et tamen in fonte, rivo, et ſtagno eadem eſt aqua, ſicut in Patre, Filio, et Spiritu Sancto eadem eſt ſubſtantia. Et licet in veſtigiis et ſimilitudinibus creaturarum nulla ſit vera ſimilitudo quâ creatura ſuo aſſimilari poſſit veraciter Creatori, ſicut nec umbra corpori, veſtigium pedi, nec ymago veræ rei, aliqua tamen in omnibus rebus reperitur ſimilitudo, licet tenuis, Creatori. Quare nec jus naturæ tanti Divini beneficii expers fuiſſe licet ſuſpicari. Quo illud a juſtitiâ credimus emanaſſe, ſicut ſplendorem a lumine, ardorem ab igne, aquam a fonte, et notitiam a mente humanâ ſuperius diximus effluxiſſe. Et cum Auguſtinus predictus generationem radii ſolis, et emanationem aquæ fontalis generationi eterni Filii aſſimilaverit, audaciam nobis inde prebet, etiam eidem generationi Divinæ juris naturæ productionem abſque temeritatis notâ poſſe ſimilari. Quo cum Chriſto qui ait: "Ego in Patre et Pater in me eſt," dicere poterit Jus Naturæ, "Ego in juſtitiâ et juſtitia in me eſt." Quare et nos cum eodem Domino qui ait Philippo, "Qui videt me videt et Patrem meum," ſane dicere valemus, Qui jus naturæ recte conſiderationis oculo intuetur, etiam juſtitiam quæ jus illud peperit ipſe veraciter contemplatur. Unde oſtenſo juſtitiæ originis modo, etiam juris naturæ nativitatis forma infimul revelatur. Et numquid tunc Lex Naturæ ſuperius rectiſſime diffinitur, quæ juſtitiæ eſſe veritas aſſeritur, quam humana ratio poterit explicare: cum ſicut Deus Dei Filius eſt, Veritas Patris increata, ita lex naturæ a juſtitiâ genita eſt veritas juſtitiæ creata, quæ mundum quem condidit Veritas eterna conditum jam regulat ipſa ſempiterna?

Approbatio diffinitionis legis naturæ.

Cap. XXXVIII.

Qualiter Lex Naturæ creata eſt.

INTELLIGIMUS jam ex præſcriptis qualiter lex naturæ antequam fieret Divinæ Providentiæ oraculo decreta eſt poſtmodum facienda, ſed qualiter ipſa perfectè creata ſit nondum nobis revelatur. Librum igitur prædictum Geneſis qui de ejus futurâ creatione divinum nobis revelavit concilium, de perfectâ ejus creatione conſulendum eſſe credimus et ſcrutandum. Scribitur vero in ejuſdem libri ij C°. ſic: "Formavit igitur Dominus Deus hominem de limo terræ et inſpiravit in faciem ejus ſpiraculum vitæ, et factus eſt homo in animam viventem." Miniſtrum ſe facturum ſuperius ſtatuit Dominus, et quid eſſet miniſterium ejus Ipſe deſignavit: jam miniſter ille quem, antequam fieret, hominem fore Dominus prædixit, factus eſt; nunquid et officium miniſterii ejus quod etiam Dominus promiſit hominem ipſum habiturum cum eodem homine eſt perfectum? Copulative namque, ut præſcribitur, Dominus ait, "faciamus hominem, et ipſe præſit univerſæ creaturæ," quo colligitur quod in nullâ temporis inſtantiâ fieri potuit homo quin et in eodem inſtanti homo ipſe univerſæ præfuit creaturæ. Factus igitur homo in animam viventem, ſimul et mundi factus eſt prælatus, quod fieri non potuit ſi non ipſe tunc mundi habuerit prælatiam. Miniſter igitur quem promiſit Dominus ſe facturum jam factus eſt: ſimiliter et officium miniſterii ejus, quod fuit mundi prælatia, jam cum eodem homine eſt perfectum, et cum officium illud ſine juſtitiâ eſſe non poterat, ut ſuperius eſt oſtenſum, juſtitiam etiam ſimul cum homine et ejus officio in creatione eorumdem eſſe creatam, ſuperius perſpicue edocetur. Ac cum juſtitiam et legem naturæ unius eſſe ſubſtantiæ, licet accidentalis, unius qualitatis, et naturæ, quo et unum eſſe comprobentur, legem naturæ ſimul cum homine eſſe creatam in uno eodemque inſtanti certiſſime erudimur, quo legem et hominem dicere compellimur eſſe coevos, ut erant homo primus, ratio, voluntas et memoria ejus, quas potentias, antequam fierent, Dominus expreſſe non promiſit ſe facturum, ſed cum Ipſe hominem ad ymaginem ſuam eſſe faciendum decreverat, etiam has potentias quibus homo ſuæ effigiaretur ymagini facere inclusive Ipſe tunc decrevit. Sic et cum officium regendi orbem Ipſe ſtatuit faciendum, etiam et juſtitiam quâ mundus regeretur Ipſe inclusivè ſtatuit concreandam: quod et expreſſè perfectè perfecit quando hominem fecit rectum, et bonam habentem voluntatem, prout ſupra apertius declaratur. Sic quæ ſimul facta eſt ſubſtantia videlicet Homo, factum eſt et accidens, ſcilicet lex naturæ, ita homini indita et connaturalis facta, ut ab eo nullatenus poſſit evelli, quia, ſicut quum dixerat Dominus, "Germinet terra herbam virentem," indita eſt terræ poteſtas naturalis producendi herbas, ut dicit Sanctus Thomas, ſic cum dixerat Dominus quod creandus Homo præeſſet univerſæ creaturæ, homini cum creatus fuerat in ejus creatione inditum eſt officium prælatiæ orbis, ſimul et lex naturæ facta, quæ ſunt ei officium et lex illa

connaturalia et ſempiterna ; quo ratione tantæ unionis inherentiæ et participationis naturæ humanæ lex illa ab eâdem naturâ nominis ſui vocabulum traxit, et vocatur *lex naturæ*, quæ ſimul cum naturâ humanâ, antequam fierent, Divinæ vocis oraculo predeſtinata eſt, deinde cum eâdem naturâ concreata, et per eam ac ipſa per illam, univerſam regunt creaturam. De quâ lege etiam dicunt Canones memorati quod ipſa incepit ab exordio rationalis creaturæ, ſcilicet hominis ; in quibus verbis hæc prepoſitio "ab" non excluſivè ſed incluſivè dici perhibetur ; ſicut ubi dicitur in Evangelio, "Poſſidete regnum quod vobis paratum eſt a conſtitutione mundi," hæc prepoſitio "a" non dicit mundi conſtitutionem fuiſſe ante preparationem regni ſalvandorum ; ſic que non fuit tempus aliquod quo genus humanum non legi naturæ ſubjacebat. Nam poſt hominis creationem Dominus deſtitit novas deinde condere creaturas. Taliter igitur, et ſub hâc formâ condita eſt lex naturæ cujus tam ſedulo ortum ſategimus percunctari.

Vide hic unde lex naturæ nominis ſui ſumpſit vocabulum

Cap. XXXIX.

Oſtenditur hic qualiter Juſtitia remanſit in homine poſtquam homo deſeruit eam.

JAM quia recolimus juſtitiam, quæ non aliud a lege naturæ eſt, voluntatem eſſe jus ſuum unicuique tribuentem, et quod primus homo eam deſeruit voluntate aliâ delectatus, ſuperius fuiſſe diffinitum, quo tunc abiit juſtitia, querere compellimur, cum ipſa ſic deſierit cum homine habitare. Sed ſi ſuperius pertractata mentibus noſtris firmiter infigantur, hoc quod queritur abſque docentis magiſterio oſtenditur. Legem namque naturæ diſtinctis quibuſdam operationibus quaſi potentiis ſecundam, quibus ipſa ſemper una diverſimode ſuæ virtutis pandit effectus, divinæ eſſentiæ ymagini ſicut et humanam animam aſſimilavimus. Quo cum Deum, qui ſuâ eſſentiâ, preſentiâ, et potentiâ mundum replet univerſum, aliquando adeſſe, aliquando abeſſe Sacra crebro Scriptura commemorat, et tamen nullibi deeſſe poterit, a Quo omnia, in Quo omnia, et per Quem omnia fiunt, et ſubſiſtunt ; ſed quotiens ſuæ largitatis beneficiis nos fovet Eum preſentem nobis eſſe dicimus, et cum eadem a nobis ipſe retineat, abſentem Eum conquerimur ; ſic et juſtitiam, quam ut veſtigium Deo aſſimilavimus, totiens a nobis abeſſe dicimus, quotiens ab ejus regulis ipſi noſimet ipſos elongamus ; ipſa tamen nunquam nos deſerit, ſed quos aliquando pro meritis, cum non fuerint, præmiare non poterit, punire tunc pro crimine non deſiſtit : ſicque nobis ſemper ipſa præſens eſt, puniens, dirigens, vel remunerans ſecundam noſtrorum exigentiam meritorum. Non enim ut corporalia quæque locum ipſa occupat, quo humanæ voluntatis habitaculo deſtituta in nobis ſubſiſtere non poſſit ; ſed ut Deus, quem peccator ſæpe ab animâ ſuâ abjicit, vagus ab hoſpite illo non diſcurrit, ſed cum eo ſemper habitans eundem in eſſe conſervat, et quem præmiare non poterit pro merito, punire non deſerit pro delicto, ſic ſemper in homine et cum homine habitat juſtitia, nunquam effectu vacua, ſed ſemper eum

regens, et ei reddens ſtipendia utrorumque meritorum. Et quamvis leges diffiniant juſtitiam eſſe perfectam voluntatem, Anſelmus, ut ſuperius recitatur, non dicit eam eſſe voluntatem ſed rectitudinem voluntatis, quo profecto voluntas habens rectitudinem nedum voluntas recta ſed et juſtitia merito appellatur. Nam, ut dicit Sanctus Auguſtinus xiiij. libro De Civ. Dei, voluntas in omnibus ymmo omnis nichil aliud eſt quam voluntates ſunt. Quare et dicit, "Quid eſt cupiditas et lætitia, niſi voluntas in eorum conſentione quæ volumus? Et quid eſt metus atque triſtitia niſi voluntas in diſſentione ab hiis quæ nolimus?" Sic ergo et nos dicere poſſimus, Quid eſt juſtitia niſi voluntas in conſentione perpetuæ conſtantiæ reddendi unicuique quod ſuum eſt? Quare ſicut paſſiones predictæ totiens in homine ceſſare videntur, quotiens ejus voluntas in earum conſentione vel diſſentione ceſſaverit, ſic et virtus, quæ juſtitia eſt, etiam in homine ceſſare dicitur quotiens hominis voluntas a rectitudinis conſentione ceſſaverit. Sed ſicut paſſiones predictæ per hominis diſſentionem non ſunt in homine omnino extinctæ, ſic nec juſtitia extinguitur licet aliquando non conſtiterit in hominis voluntate, quo ſibi meritum ipſa minime operatur.

Cap. XL.

Qualiter nomen Juſtitiæ aſſimilatur nomini Hominis.

SED ut hæc lucidius apertiuſque clareſcant ſubſequentia conſideremus. Homo, ut predicitur, factus eſt ad ymaginem Dei, et tamen compago humani corporis quod ex carne, nervis, et oſſibus componitur, nullam Dei, qui ſpiritus eſt carnem nervos et oſſa non habens, ſimilitudinem gerit; ſed quia anima hominis vera Dei eſt ymago propter carnis et animæ conjunctionem, quâ anima et caro ſunt unus homo, totus homo dicitur ad ymaginem Dei factus, prout docet Magiſter Sententiarum ſuper Epiſtolam Pauli primo ad Corinth. xj. C°. Sic potentia illa animæ humanæ quæ voluntas dicitur, et ſæpius bona vult ſæpius vero mala, juſtitia, quæ virtus eſt, ſemper non eſt; ſed cum voluntas illa juſtitiam firme voluerit, tunc propter ejus cum juſtitiâ unionem tota voluntas illa juſtitia appellatur, et conſtans ac perpetua dici poteſt quia conſtans et perpetuum eſt quod vult; quod et cum ipſa velle ceſſaverit, etiam juſtitia deinde vocari merito et ipſa ceſſat. Quare dum voluntas et juſtitia taliter uniuntur, ipſæ ambæ ſic unitæ juſtitiam vocari merentur, ut caro et anima merentur dici unus homo. Et ſic juſtitia redit et recedit juxta libitum humanæ voluntatis; quam tamen ſemel defertam homo non reſumit, niſi cum eam iterum dederit gratia primi Donatoris qui ſolus juſtificat impios. Et tamen juſtitia ſic varians vices ſuas cum homine ſemper manet virtus conſtans et perpetua, totiens homini de novo data, quotiens ſibi voluntatem prebuerit Deus amiſſam eam denuo reſumendi, et voluntas, quæ ſolùm potentia eſt, proprio arbitrio diverſimode variat actus ſuos.

Cap. XLI.

Vide hic quomodo differt Juſtitia originalis a Juſtitia naturali.

ADHUC unum reſtat explorandum quod hucuſque juſtitiæ perfectam notionem nebuloſâ quâdam caligine contenebrat. Juſtitia enim, quæ gratiam gratum facientem includebat, in ejus exordio tantæ fuit efficaciæ et vigoris quod, ſi ipſam ſervaſſet homo, ipſe ab omni incommodo liber et prudentiâ plenus non mori potuiſſet, verum ſemotâ omni corruptionis moleſtiâ modo ſuo ad equalitatem perveniſſe potuit angelorum. Hæc non præſtat juſtitia cujus ortum oſtendimus: quare aut duas juſtitias fuiſſe creatas, aut hanc quam colimus non eſſe conſtantem et perpetuam, quæ tanta ſuæ virtutis emolumenta amiſit, fateri arctamur. Sed abſit duas dicere juſtitias fuiſſe creatas, et non minus confundimur ſi mutabilitatis aut inconſtantiæ vitium juſtitiæ imponamus. Scimus profecto quod Deus unus ad ſui ſimilitudinem hominem unum, juſtitiam unam, quo et legem naturæ unam in formâ quam deteximus concreavit. Sed juſtitiam illam ymmo et hominem tantâ ſuæ gratiæ affluentiâ in eorum initio fecundavit ut ſi ipſam juſtitiam intemeratam illibatamque ſervaſſet homo, ipſe ſine omni incomodorum diſpendio ad predictam parilitatem angelorum veheretur. Sed, Heu, juſtitiam illam deſeruit homo, quo et predictâ gratiâ ipſe privatus eſt, ignorantiâ, maliciâ, infirmitate, et cupiditate propterea vulneratus. In rectitudine namque hujus juſtitiæ, quæ ſupernaturalis gratiæ donum fuit, factus eſt homo, et ipſa in eo ſubjectionem rationis ſuæ ad Deum ſupernaturalem operata eſt, qua et corpus ſuum animæ ejus, ac inferiores vires rationi ſuæ perfecte ſubdebantur: unde, ſecundum Auguſtinum, tunc amor hominis in Deum imperturbatus fuit, qui eſt caritas, quo ſtatus ejus ſanctus etiam et ſupernaturalis exiſtebat. Nam ſi tantùm naturalis tunc fuiſſet ſtatus ejus, etiam et poſt peccatum hujuſmodi permanſiſſet, quia ſecundum Dionyſium etiam data in demonibus naturalia integra poſt peccatum remanſerunt, qualis non fuit hominis ſtatus poſt lapſum. Nam ipſe tunc carnis ſuæ motum inobedientem animæ ſuæ ſentiens confuſus eſt nuditate ejus, quo reciprocam inobdientiæ ſuæ recepit pœnam. Juſtitiam hanc, dum tantâ gratiâ affluebat, originalem juſtitiam appellavimus, ſed eam tantâ gratiâ viduatam non originalem, ſed ſolùm juſtitiam patimur nominari. Nunquid tunc ex hôc duas fuiſſe juſtitias fateri docemur, aut poterit inde juſtitia de mutabilitatis aut inconſtantiæ vitio diffamari? Ipſa vero ſemper eadem eſt in genere, licet tantæ gratiæ beneficio hominis incuriâ jam privetur. Quid aufert caſtitatis naturæ quòd ſemel corrupta caſtitas non eſt caſtitas virginalis? Gratia receſſit quam habuit virgo, quo caſtitatis ejus meritum, licet continens ipſa deinde permaneat, eſt minutum; virtus, quæ caſtitas eſt, eadem ſemper eſt in genere virtutis in virgine, in cælibe aliâ qualicumque. Sic et peccatum quod originale dicitur, quod carentia originalis juſtitiæ cum debito habendi diſcribitur in primo parente, non aliud fuit in genere peccati quum avertio ab incommutabili bono et convertio ad bonum commutabile, ſicut et omne actuale peccatum eſt, quamvis unum alio ſit

gravius; ſed illud primum quia omni humani generis peccatorum origo fuit, de quo dicit Apoſtolus ad Romanos v. C°. "Per unum hominem in hunc mundum peccatum intravit, et per peccatum mors," originalis peccati nomine deſignatur. Tamen illud et omne peccatum mortale conſimilis ſunt maliciæ in modo genere que peccandi. Sic Saulus Paulus effectus idem qui antea homo fuit, ſed alterius gratiæ, quo nomen cum moribuſque ipſe tranſmutavit; ſic et Petrus qui olim Simon Barjona vocabatur, donatâ gratiâ, mutavit et nomen ſuum. Sic et juſtitia non eſt mutata, licet ſecundum gratiæ ſuæ affluentiam diverſam diverſa nomina ſortiatur: ipſa enim, ut de lege naturæ dicunt Canones ſuperius recitati, ab exordio rationalis creaturæ incepit, et nunquam eſt mutata, ſed immutabilis perſeverat.

Cap. XLII.

Quare Lex Naturæ dicitur Divina et filia Legis Divinæ.

NATURAM et vim legis naturæ ita modo nos credimus eſſe ſcrutatos, ut vix potentiæ dignitatis aut virtutis ejus nobis juſtitia aliqua relinquatur. Tamen quia Yſiodorus in libro Ethimologiarum ſimiliter et Canones legem iſtam nominant *Jus Divinum*, etiam et nos eam ſuperius diximus eſſe filiam Legis Eternæ. Unde hæc præconia ſibi conveniant nondum enodatur; et ſi ab ejus creatione quam denudavimus ſibi ea dixerimus adveniſſe, cunctas tunc res creatas conſimilibus paſſim inſigniis decoramus, quod pudet cogitare. Igitur aliam nos inveſtigare cauſam cur lex naturæ hiis nominibus venuſtetur oportebit, aut hæc pati, ut antea, juſtitiæ nebulis agitari. Igitur neceſſarium judicamus primitus quærere quæ ſit illa lex Divina cujus filiam diximus Legem eſſe Naturæ, qua perfectè cognitâ, forſan et cur lex naturæ lex Divina nominetur pariter agnoſcetur. Sanctus vero Auguſtinus, Contra Fauſtum libro xxij. ſic ait: "Peccatum eſt dictum, factum, vel concupitum contra legem eternam, legem eternam voco Divinam Providentiam." Ex hiis verbis conſtat Sanctum illum docuiſſe Divinam Providentiam legem eſſe divinam, cum eternitas non differat a divinitate, ſicut nec divinitas ab eternitate. Quæ ſit tunc hæc providentia quam legem Dei Auguſtinus ſic nominat, ulterius poſtulemus. Boetius in libro Conſolationum Philoſophiæ ita dicit, "Providentia eſt ipſa divina ratio in ſummo omnium principe conſtituta, quâ cuncta diſponit." Si cuncta diſponat, ſequitur quod legem naturæ ipſa diſponit: tamen idem Boetius hoc apertius multo ibidem revelat, dicens, "Omnium generatio rerum cunctuſque mutabilium naturarum progreſſus, et quidquid aliquo movetur modo, cauſas, ordinem, et formas ex Divinæ mentis ſtabilitate ſortitur. Hæc in ſuæ ſimplicitatis arte compoſita multiplicem gerendis rebus modum ſtatuit, qui modus cum in ipſâ divinæ intelligentiæ puritate conſpicitur *Providentia* vocatur." Quibus concordat Damaſcenus libro ij°. Sententiarum ita dicens: "Providentia eſt voluntas Dei propter quam omnia quæ ſunt convenientem deductionem ſuſcipiunt." Ex quibus jam perſpicue erudimur quæ ſit providentia Divina

quam legem eſſe Divinam Auguſtinus affirmat, quo matrem jam invenimus cujus filiam diximus legem eſſe naturæ. Sed cur ipſa ejus filia dici debeat, aut lex divina nominari, nondum eſt oſtenſum. Quare de hiis aliquos majorum noſtrorum conſulere videtur oportunum. Sanctus vero Thomas, in Primâ Secundæ Queſtione lxxxxj. Articulo ij°, ſic dicit: "Omnia quæ Divinæ Providentiæ ſubduntur participant legem eternam in quantum habent inclinationes in proprios actus et fines, et inter cetera rationalis creatura excellenter quodammodo Divinæ Providentiæ ſubjacet, in quantum et ipſa ſit providentiæ particeps ſibi ipſi et aliis providens: unde et in ipsâ participatur ratio eterna per quam habet naturalem inclinationem ad debitum actum et finem, et talis participatio legis eternæ in rationali creatura, lex naturalis dicitur, et ſic lex naturalis nichil aliud eſt niſi participatio legis eternæ in rationali creatura." Hæc ille. Et cum homines gratiâ participationis divinitatis, quæ participatio gratiam gratum facientem includit, quâ nedum filii Dei ſed et Dii appellari mereantur, (dicente Joanne in Evangelio, "Quotquot autem receperunt eum dedit eis poteſtatem filios Dei fieri;" et Pſalmiſta, "Ego dixi, Dii eſtis et filii Excelſi omnes;" ac Apoſtolus ad Romanos viij°. C°, "Quicumque Spiritu Dei aguntur, hii filii Dei ſunt;" ſimiliter primò ad Corinthios vj°, "Qui adheret Deo unus ſpiritus eſt cum Illo;" quare et Boetius in tertio libro tractatus ſui predicti dicit, quod, "licet naturâ unus ſit Deus, participatione nichil prohibet Deos eſſe quam plurimos,") conſequenter judicandum eſt, ut cum lex naturæ ita participet legem eternam quod nichil aliud ipſa ſit, ut dicit predictus Sanctus Thomas, niſi participatio legis illius, quod ipſa nedum filia legis divinæ dicatur, ſed etiam meretur ut ipſa nominetur Lex Divina, per imitationem tantùm et non æqualitatem. O qualis eſt hæc participatio legis eternæ! Cum non tantùm ut homo Deo, lex naturæ divinæ legi adherens eidem uniatur, ſed cum totum quod eſt lex naturæ participatio ſit legis divinæ, de quâ ipſa lex naturæ nedum ut a fonte rivus fluit, ſed ut alti maris ſinus, pars eſt altæ Divinitatis abiſſi. Civiles namque leges dicunt quòd partus portio eſt viſcerum maternarum, tamen et a patre partus ſumit portionem. Sed hæc lex naturæ nihil aliunde habet ad ſuæ naturæ cumulum quod non effudit pelagus incircumſcriptibilis legis eternæ; nec pars eſt hæc divinæ legis, ut quantitas a quantitate ſublata quæ totum minuit a quo aufertur, ſed ut ignis ab igne accenſus, hæc lucem divinæ legis non minuens nobis eam per ſe reddit clariorem. Sic ergo lex naturæ lex divina eſt, cum totum quod ipſa eſt ſit divinum, et filia legis Divinæ ipſa eſt, cum totam eam peperit et ſemper pareat lex divina. Hæ ſunt duo luminaria magna in firmamento cœli poſita, videlicet in Eccleſia Dei. Luminare majus eſt Lex Divina quæ preeſt diei ſpiritualis vitæ noſtræ quâ Deum contemplamur, Eo quoque fruimur hìc in terrâ: et luminare minus Lex Naturæ eſt, quæ preeſt nocti tenebroſæ hujus temporalis converſationis noſtræ quâ peregrinamur a Domino, Ejus tantum gratiâ juſte agentes in hâc vitâ.

Cap. XLIII.

Sicut luna ad solem, sic se habent humanæ leges ad Divinam.

SED proh dolor! jam cernimus ex conclusis exalationes quasdam atras ascendere, quæ, si non fervidi solis veritatis radiis dissolvantur, in nubem succrescent condensam quæ omnia superius concluſa suâ caligine obscurabit. Consuetudines namque et constitutiones humanas legis naturæ regulis supra diximus subjacere, et eas ita ab ejus finibus egressas participantes naturam ejus, ut si ipsas ratas illa non habuerit, consuetudines et constitutiones illæ non leges sed corruptelæ vocari mereantur. Et jam ipsam naturæ legem ita definibus legis Divinæ diximus esse progressam, ut nedum sicut filia a matre, quæ pars est viscerum ejus, sed ut lumen de lumine ipsa ex lege Divinâ fit cum eâ lex divina: ex quibus recte edocemur in lege Divinâ consistere plenariam potestatem et virtutem omnium legum humanorum, cum aliæ plures ve humanæ leges non existant quam consuetudines, constitutiones, et lex naturæ, nec aliquid humanæ illæ leges possint quod non potest lex Divina. Sed quid hiis scrupulosiùs nos difficultatibus arduis poterit intricare? Nam si firme sint hæc concluſa, omnes leges humanæ inutiles esse videntur, cum nihil aliud illæ agunt, aut possint quam quod agit et potest lex Divina: quâ igitur lege divinâ perfecte cognitâ noscuntur et aliæ leges universæ, ipsa quoque sola sufficit ad regimen universi. Nec judicium hominum aliquod bonum est quod ipsa non formavit, ab omni enim errato illa corrigit et reprobat omne malum: de quâ etiam sic dicunt Canones; "Cum Deus aliquid contra morem aut pactum quorumlibet jubet fieri, et si nunquam ibi factum est, tamen faciendum est, et si omissum, instaurandum est, et si statutum non erat, instituendum est" (viij. Di. C°. *Quæ contra mores*). Ut quid tunc tanto sudarunt studio Legum Civilium conditores, et non minus imprudenter se affligunt qui tot vigiliis leges illas studentes macerant carnes suas? ut quid sapientissimi Franciæ judices nedum pro legibus civilibus sed etiam pro regni illius legibus addiscendis tot peregrinationis suæ annos consumunt? Sed super omnia, si hæc vera consistant, admirandum foret, cur studentes leges regni Angliæ, quæ tantum insulares sunt, et quarum peritiam studentes illi vix viginti annorum lucubrationibus adeo adquirunt ut ad infimum gradum in legibus illis donari solitum eligi mereantur, tot annos preteriunt sic incassum, et, quod majus est, cum gradum illum suscipiant non multo minore quam duorum milium scutorum effusione ordinarias expensas, quas solempnitas susceptionis gradus illius deposcit, persolvunt, dummodo ipsi paucorum multo annorum studio minorumque sumptuum largitione competentur leges potuissent didicisse divinas, et ad gradus summos in eisdem fuisse provectos, cum quibus recipissent peritiam omnium legum et gradus eisdem condignos. Similiter et nos legis naturæ invanùm indagavimus jam naturam, dum inutilem eam nobis esse conspicimus, cum lex Divina omnia perfecte doceat et faciat quæ docet aut facere poterit lex naturæ. Sed proh pudor!

Quam ſtolidum probroſumque eſt talia cogitare! Nonne luna, quæ corpus eſt opacum, omne lumen quod habet a ſole recipit, quo noctem ipſa illuminat et gradientibus iter oſtendit, et tamen ſol ſine lunæ medio hæc non facit, qui proprio curſu noctem cauſat et in eâ tenebras potius quam fulgorem, et tamen in ſole, et a ſole eſt omne lumen quod luna ſic emittit? Et nonne conſimiliter omnes planetæ ceteri a ſole habent claritatem ſuam, ſimiliter et omnes ſtellæ, quarum quælibet ab altera ſolis effectu differt in claritate? Harum profecto omni neceſſitate bonitate et decore cœlum privat qui leges hominis, quæ ut ſtellæ lucent et differunt, aufert hîc de terra. Et quis unquam Aſtrologus curſus perfecte novit ceterorum ſiderum qui non niſi ſolis iter conſiderat ejuſquoque ortum novit et occaſum? Zodiacus vero obliquus circulus ſolis meatum docet, ſed non in toto ipſe judicat flexus et reflexus aliorum orbium planetarum: quilibet namque planeta in propriâ verſatur ſphærâ, in quâ ipſe ſuæ naturæ explicat vires, et tamen ſolis ipſe non declinat leges quas omnes planetæ participant, non minuentes ſolis claritatem. Sic infimi cœleſtium ſpirituum ordines ſummorum angelorum participant cariſmata gratiarum, et licet illuminationis gratiam quâ ipſi inferiores fulgent per ſuperiores recipiant, abſit per hoc ſentire eos non eſſe neceſſarios ad cœli perfectionis complementum. Quid ſi dixerit Dominus "In duobus mandatis totam pendere Legem et Prophetas," num per hoc Ipſe dum decem mandata docuit, oſtendit ſe leges ſuperfluas addidiſſe? Aut cum dixerat, "Quæcumque vultis ut faciant vobis homines hoc et vos facite illis, hoc eſt enim tota Lex et Propheta," Ipſe tunc decreverat Novi et Veteris Teſtamenti leges tam profuſe prolatas, ſimiliter et Prophetarum doctrinas nobis non eſſe accomodas aut non neceſſarias ad ſalutem? Abſit talibus eſtuare frivolis et iniquis ſic deviare meandris. Nam ſicut a ſole luna, cetera quoque ſidera ſplendores ſuos accipiunt, alias que virtutes quibus terræ et mari ſuos explicant effectus, et tamen ſolis rimantes naturam curſus ceterorum ſiderum poterunt ignorare; ſic et Divinæ legis influentiâ omnia hominum jura ſuas recipiunt vires, quibus operationum ſuarum ad omne genus hominum diverſimode emittunt effectus, nec Divinæ legis ſcientiâ eruditi licet profunde ſine legum humanorum ſtudio in legibus humanis poterunt eſſe diſerti. Sic nec audientes mandata duo in quibus pendent tota Lex et Prophetæ, neque facientes aliis quod ſibi nolunt fieri ſciunt aut intelligunt omnes leges et prophetas, licet ex hiis paucis dependeant ſeu proveniant omnia quæ ſcribuntur in legibus et prophetis. Ex quibus jam liquet omnes leges humanas quaſi inſtrumenta eſſe quibus lex Divina in humanis actibus explicat virtutes ſuas, et ita ſe habere ad legem Dei ut luna ad ſolem, oculus erectus ad lumen, ſed potius ut fatum ſe habet ad eternam Providentiam; de cujus relatione, comparationeque Boetius in iiij°. libro, Conſolationis Philoſophiæ ſic ait: "Uti eſt ad intellectum ratiotinatio, ad id quod eſt id quod gignitur, ad eternitatem tempus, ad punctum medium circulus, ita eſt fati ſeries mobilis ad Providentiæ ſtabilem ſimplicitatem."

Cap. XLIV.

Qui sunt fines Divinæ legis et humanæ hic queritur et ostendit.

SED ut omnia supra scripta manifestius perfectiusque clarescant, necessarium fore videtur ut qui sint fines ad quos Divinæ et humanæ legis tendunt effectus demonstrentur. Nam hiis patefactis etiam quali subjectione lex naturæ legi subordinatur divinæ et omnium legis naturæ virium summa plenariè cognoscentur. Constat profectò legem naturæ non aliud posse operari quam hominem disponere ad virtutem: quia cum regis officium cui, ut dicit Sanctus Thomas, summa regiminis cura in rebus humanis comittitur, hoc solum efficiat ut homines fiant virtuosi, ymmo et illud sit finis omnis legislatoris, et omnis politia corrumpatur si ab hoc fine declinetur, prout Sanctus ille in libro suo De Regimine Principum profuse demonstrat, nos liquide edocemur leges humanas effectum producere non posse alium quam hominem dirigere ad virtutes, quibus pax, quæ unitas est societatis humanæ, et amor, qui est vinculus pacis, nutriantur et conserventur. Virtutum quoque usus perfectus, ut dicit Philosophus (vij Politic.), felicitas est, quam omnes Peripatetici *summum bonum* appellant. Ex quibus dicere animamur quod virtus est finis totius effectus legis naturæ et omnis legis humanæ. Ipsa etiam finis quodammodo censeatur, ad quem primò tendit motus totius humani affectus. Nam, ut dicit Boetius in tertio libro Consolationis, "mentibus hominum est boni naturaliter inserta cupiditas, ut ne quisquam aliud cupiat quod non sit bonum, si non eum ad falsa devius error abducat." Et cum dicat Philosophus, etiam et Sanctus Thomas in primo libro Tractatus predicti, quod virtus cujusque rei esse describitur quæ bonum facit habentem, non potest homo, qui solum bonum appetit, virtutem posse non appetere, nisi errore seductus; quo sequitur quod unus et idem est finis legis humanæ et humani appetitûs, videlicet virtus, quæ hominem reddit bonum, et quæ bonitas est humana, de quo fine loquitur Philosophus, in secundo et tertio Metaphys. cum dicat quod finis et bonum convertuntur. Sed hic finis non est finis ultimus quo hominem ducit appetitus ejus, nam ad ulteriorem finem quàm ad istum constat hominem esse creatum, cui naturaliter inest desiderium quod neque virtute, neque bonitate aliquâ quæ hic poterit adipisci, aut ullis hujus mundi commodis poterit satiari, nam omnia hæc licet homo unus in solidum possideret, dum securitatem ea retinendi ipse hic habere non possit, animus ejus quietari non poterit ab estu et desiderio ulteriori; nec tamen desiderii motus in infinitum procedit, quia tunc inane esset illud conditum, cum infinita pertranfiri non possint; neque repleri posse hominis desiderium diffidimus, cum dicat Propheta, "Qui replet in bonis desiderium tuum." Sed quodcumque est illud quod hominis replet desiderium, hoc profecto finis est ultimus appetitûs humani, et hoc est finis quem querimus, nec ad hunc finem hominem fuisse plas-

matum ſinimur dubitare. Hunc igitur finem quis ſit omni conatu perſcrutemur et quæ lex nos illuc ducat non pigeat ſciſcitari. Boetius vero in predicto tertio libro taliter affatus eſt. "Omnis mortalium cura quam multiplicium ſtudiorum labor excercet, diverſo quidem calle procedit, ſed ad unum tantum beatitudinis finem nititur pervenire: id autem eſt bonum quo quis adepto nihil ulterius deſiderare queat." Hæc ille. Et quid ſit hæc beatitudo ipſe ibidem diffinit dicens, "Liquet eſſe beatitudinem ſtatum bonorum omnium congregatione perfectum." Quid tunc amplius deſiderare poſſit homo, cum ipſe obtinuerit omnia bona? Sanctus vero Thomas in predicto primo libro dicit quod "beatitudo eſt ultimus deſideriorum finis." Numquid tunc ipſa eſt finis ille ultimus quem querimus, quo replet Dominus omne hominis deſiderium? Invenimus jam profecto ultimum finem quo tendit et quo ſaturari poſſit omnis hominum appetitus, beatitudinem videlicet, quæ ut dicit idem Sanctus in tertio libro tractatus predicti, "in ſola viſione divina conſiſtit." Sed ad hunc finem attingere non poteſt homo per legem naturæ, quæ circa adeptionem virtutum omnes vires ſuas conſumat hic in terrâ, dum finis iſte non niſi in cœlis poterit reperiri; illîc enim non aſcendit lex naturæ, quæ ultimos ſui termini limites fixit hic in terra, dicente etiam Domino, quod, "nemo aſcendit in cœlum niſi qui deſcendit de cœlo," ſed Lex Divina, cui naturæ legem ſuperius diximus eſſe ſubjectam, de cœlo deſcendit. Quare ipſam ſolam eſſe credimus quæ illic nos conducere poterit, quam nos Dei providentiam ſuperius nominavimus; Providentiæ namque nomine totam Legem Divinam dicimus tam Novi quam Veteris Teſtamenti, ſicut "dilectionis" vocabulo Apoſtolus plenitudinem legis deſignavit; et licet non ſolâ lege ſed potius gratiâ ad beatitudinem perveniatur, dicente Apoſtolo, "Gratia Dei vita eterna," tamen cum Providentiam legem Dei dicimus, Divinæ gratiæ ductum et opem, ſicut et Divinæ Providentiæ, ab hac concluſione minime relegamus. Hæc lex vero ſapientia illa eſt quæ attingit a fine uſque ad finem fortiter, et diſponit omnia ſuaviter. Doctrix ipſa eſt diſciplinæ Dei et electrix operum illius; ſobrietatem et ſapientiam illa docet et juſtitiam et virtutem, quibus utilius nihil eſt in vitâ hominis. Quare virtutem non habet lex naturæ quam non ſuxit ab uberibus ejus quæ contubernium habet Dei, et nos per eam charitatem habemus ad turbas, et honorem apud ſeniores ac immortalitatem et memoriam eternam (Sapientiæ viij. C°.) Nedum jam invenimus humani deſiderii finem ultimum quem queſivimus, ſed et Legem quâ finem illum amplecti poſſimus et tenere, ſi ejuſdem legis monita perſequamur?

Cap. XLV.

Duo ſunt fines intentionis agentis per intellectum.

NEC admiretur lector ſi duos conſtituerimus fines concupiſcentiæ humanæ, primum videlicet et ultimum; primum virtutem gratiâ informatam ad quam omni ſtudio pervenire contendimus, uti ejuſdem merito ad ultimum finem, beatitudinem ſcilicet, tanquam ad coronam et premium pertingere valeamus. Conſimiliter namque ponit fines duos humani intentus Sanctus Thomas ſæpius in predicto libro De Regimine Principum, poſuerunt etiam et veteres qui primum finem nomine Τέλος et ſecundum nomine Σκόπον deſignabant. Ut cum quis pro lucro ſibi promiſſo ad ſignum aliquod ſagittaverit, primus intentionis ſuæ finis eſt ſignum illud ferire telo ſuo, pro quo fine arcum parat et cordam, ſagittam aptat, tendit arcum et trahit, ac totum ſui conaminis niſum ita ad hunc finem applicat, ut ulterioris finis videlicet lucri, cujus gratiâ hæc omnia fiunt, ipſe videatur quodammodo obliviſci: et tamen ſi ſignum ipſe læſerit quo primum finem ipſe conſequutus ſit, ultimum finem, videlicet lucrum, confidenter repetit, pro quo hæc omnia ipſe tam cedulò operatus eſt; ſic finem boni qui tantum virtutibus gratiâ informatis poteſt adipiſci, videlicet ut homo bonus ſit, omnis homo primo intendit, licet errore ſæpius abducatur, ſciens quod, ſi hunc finem ipſe optinuerit, gratiâ Divinâ interveniente et fide Jeſu Chriſti, etiam ulteriorem finem, quem ſibi ultimò proponit, videlicet beatitudinem, quaſi ex merito conſequetur. De hiis duobus finibus loquutus eſt Pſalmiſta, cum dixerit, "Qui poſuit fines tuos pacem." Nam per primum finem, videlicet virtutem, adquiritur pax quæ in viâ poterit nanciſci, et per ſecundum pax ſempiterna poſſidetur in patriâ. Similiter et Apoſtolum de hiis duobus finibus loqutum fuiſſe cenſetur cum dixerit, "Nunc autem liberati a peccato, ſervi autem facti Deo, habetis fructum veſtrum in ſanctificationem, finem vero vitam eternam." (ad Romanos vj. C°.) Nam virtus, quam primum eſſe finem diximus, fructus eſt quo boni ſumus et ſancti, et beatitudo, quam ultimum finem poſuimus, vita eſt eterna: iſte namque finis ultimus eſt, finis ille de quo Philoſophus dicit quod agens per intellectum propter finem operatur. Et hos ambos fines docuit Dominus in Evangelio quando in monte pro virtutibus beatitudinem octies repromiſit. Et licet beatitudo quam appetit homo ſit ultimus finis ad quem eum ducit Lex Divina, non eſt tamen beatitudo illa finis ultimus legis divinæ, qui in Deo conſiſtit, in quo nihil eſt quod non ſit Deus; ſed ipſemet Deus finis eſt legis ſuæ, et principium ſine principio, et ſine fine. Sed quia legem naturæ cum Divinâ gratiâ ad finem primum humani deſiderii, videlicet ut virtuoſus fiat homo quo et bonus, oſtendimus deſervire; et legem divinam ad finem ultimum humani appetitûs, videlicet ut beatus ſit homo, a Domino eſſe collatam; quid ex hiis duobus finibus jam reſultat videamus.

Cap. XLVI.

Hic ostendit Tractans quali subjectione Lex Naturæ Legi Divinæ subrogetur.

SANCTUS THOMAS, in predicto primo libro De Regimine Principum, dicit quod tanto est omne regimen sublimius, quanto ad finem ulteriorem ordinatur; et semper invenitur ille ad quem pertinet ultimus finis imperare operantibus ea quæ in ultimum finem ordinantur; sicut gubernator navis ad quem pertinet navigationem disponere, et ejus est cura ultimi finis navis, videlicet ut ipsa perducatur in portum, imperat fabro qui navem constituit et reficit ejus collesa; et miles imperat fabro qualia arma ipse facere debeat, et qualiter defectus, si qui in factura eorumdem acciderint, ipse debeat reformare. Sic et gubernatores ac rectores in lege Divinâ, quæ ad ulteriorem finem ordinatur quam lex humana, imperare debent gubernatoribus et rectoribus in lege humanâ, et eorum defectus, cum fuerint, corrigere et facere emendari. Hæc carptim colliguntur ex scriptis predicti Sancti Thomæ in predicto primo libro et in aliis sequentibus libris tractatus predicti Similiter et Philosophus in primo Ethicorum dicit, quod ars architectoria est omniun aliarum preceptiva. Tamen eadem apertius multo docet ille magnus legislator Moyses Deutron. xvij°. C°. sic dicens: "Si difficile et ambiguum apud te judicium esse perspexeris inter sanguinem et sanguinem, causam et causam, lepram et non lepram, et judicum inter portas tuas videris verba variari, surge et ascende ad locum quem elegerit Dominus Deus tuus, veniesque ad Sacerdotes Levitici generis et ad Judicem qui fuerit illo tempore, quæres que ab eis, qui judicabunt tibi judicii veritatem, et facies quodcumque dixerint qui presunt loco quem elegerit Dominus, et docuerint te juxta legem ejus; sequeris sententiam eorum, nec declinabis ad dextram vel siniſtram." Ecce quomodo lex quæ ad ulteriorem finem ordinatur legem regit quæ ad primum finem dirigit, et rectores legis divinæ rectores humanæ legis dirigere precepit lex divina! Sic superiora quæque inferiora gubernant, sic celestia terrestribus virtutes ministrant, cœlum terram irrigat et germinare facit, sic rationabilia brutis imperant, sentientia utuntur vegetantibus, et ab inanimatis vegetantia nutriuntur, ut non sit ymum aliquid quod superiori non succumbit, præter temerarium hominem qui suâ iniquitate sæpe deserit et conturbat ordinem universi. Quare cum non possit lex humana, neque judex sententiam per eam dictans, legis Divinæ preterire mandata, necessarium fore videtur judici seculari, ut ipse in Divinis legibus sit expertus et in rebus dubiis decretum sequatur Summi Sacerdotis, cum secundum legum ipsarum censuram ipsum semper formare oporteat decretum suum, nec eisdem ei liceat in aliquo contraire. Quare et Leges Civiles dicunt, quod jurisprudentia est Divinarum atque humanarum rerum notitia, justi atque injusti scientia, quia profecto leges non intelligit humanas, qui omnino ignorat Divinas. Nec ob hoc exigitur ut judex secularis sciens sit ut theologus in Divinis; nec ut subditus in temporalibus scientiam

habeat in legibus humanis perfectam, ut judex qui de eisdem legibus judicabit, quamvis ignorantia juris neminem excuset; sed sufficit subdito ut precepta legis agnoscat, sicut et servo voluntatem domini sui, remanentibus apud legis peritos altioribus legis sacramentis: sic enim sæpè meritoriè magis per minus scientes, quam per peritiores legibus obeditur.

Cap. XLVII.

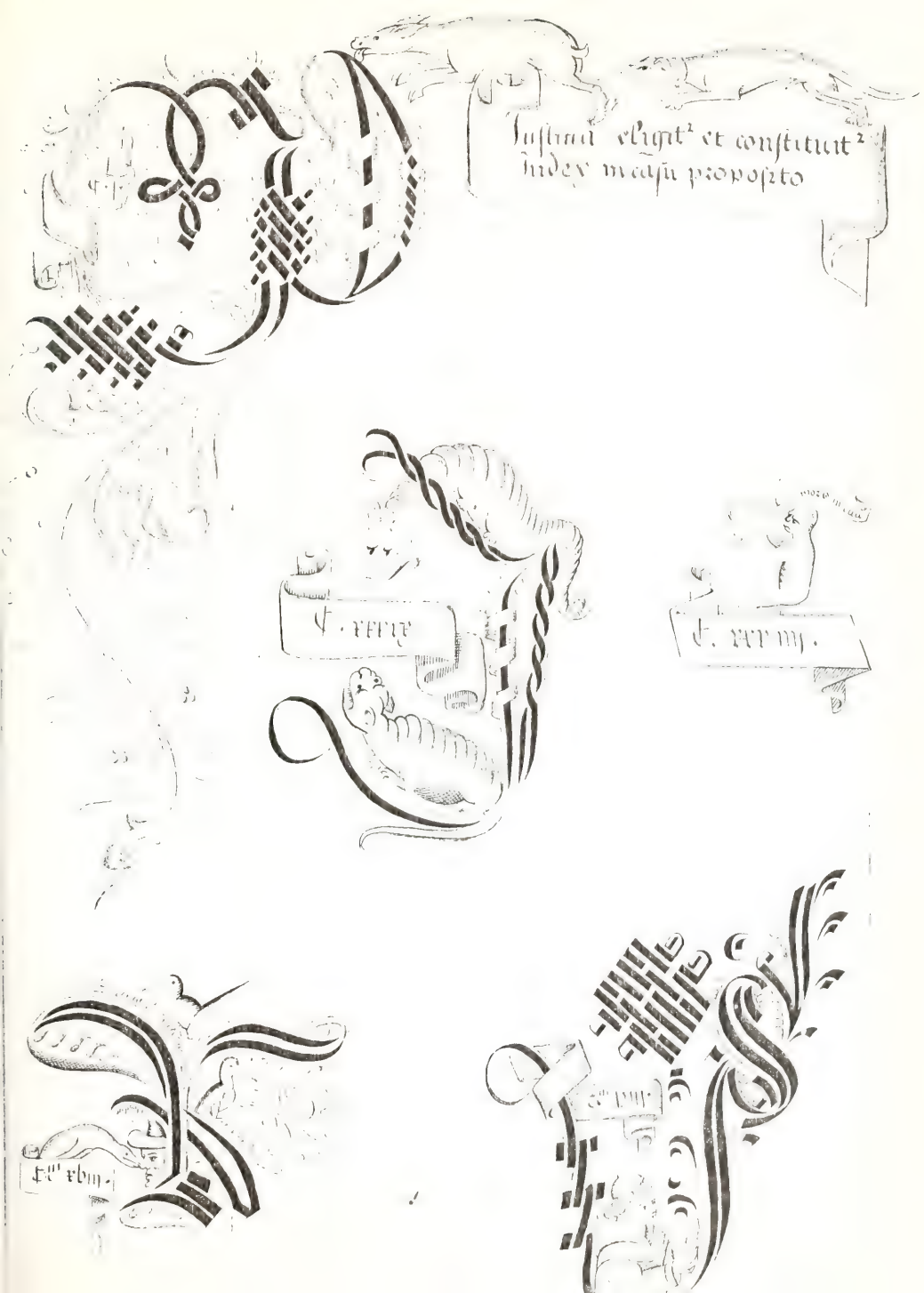
Finis.

EX finibus legum quos ostendimus plenaria omnium quæ quæsivimus jam resultat agnitio: videlicet quali subjectione Lex Naturæ Divinæ Legi subrogatur, et omnium legis naturæ virium summa exinde penitus denudatur. Quare modo cum finibus illis huic operi finem imponimus, et de Legis Naturæ Natura claudimus hunc libellum, protestando semper quod, licet nos in hoc Tractatu sæpius Legem Naturæ non infimis extulimus preconiis, non in hoc fuit aut est intentionis nostræ conceptus, quod lex illa, jam originalis justitiæ viduata præsidio, sufficit, aut unquam sic destituta sufficiebat, justificare hominem aut actus ejus, ut meritis legis illius, quæ tantum naturalis est, mereri possit homo supernaturale premium, aut aliquid sine gratiâ facere quo promoveretur ad vitam eternam. Et si quid huic contrarium nos scripsisse in premissis ab aliquibus censeatur, ab ignorantiæ nebulis hoc prodiit, et non a nostræ beneplacito voluntatis. Quare si quod tale fuerit, (quod absit;) illud jam revocamus, submittentes nos tam de præmissis, quam in omnibus quæ in hoc opusculo scripsimus aut scribemus examinationi Ecclesiæ ejusque judicio et censuræ.

Cap. XLVIII.

Continuatio hujus Tractatus ad subjequentem.

NEC admirentur premissa legentes quamquam eorum Auctor, qui tantæ difficultatis questionem disputare conatus est, quasi assumpti operis sui immemor tam morose institit indagini legis quæ eam diffinire sufficiat. Neque eos moveat quod peregrè profecturus quispiam eo magis accelerat gressus suos, quo prolixius iter sibi restat vel difficilius peragrandum. Nam artifex tam præceps negligens ve non est ut opus aggrediatur aliquod, donec instrumentum quo illud fiat preparaverit, aptaverit que fabricæ quam ipse mente gestat. Sic et premissorum scriptor, opificis modum sequtus, non prius argumentorum molimina aggredi ausus est, quam Legem quâ ea rectè librari discuti quoque poterunt adinvenerit: quâ jam repertâ, ipse ad predictæ disputationis acies securus progreditur: alium superinde, qui *De Jure Succedendi in Regnis Suppremis* intitulabitur, exordiens sic Libellum.



SECUNDA PARS:

VIDELICET, DE JURE SUCCEDENDI IN REGNIS SUPREMIS.

Justicia eligitur et constituitur Judex in casu proposito.

PREPOSITA queſtio, cujus ſolutionem querimus, trium Competitorum de Jure ſuccedendi in Regno uno contendentium cauſam exponit. Et nos Legem qua ſolvi poterit queſtio illa, et hujus cauſæ ſedari litigium, Tractatu non modico pandimus jam finito. Judex tamen cujus decreto hæc fieri poterunt nondum eſt repertus; et quid proderit edificium conſtructuro ſecuris ſine ſecante, aut ſarra ſine trahente in ea? Artifex eſt qui domum talibus fabricat inſtrumentis. Non magis vero opitulabitur lex contendentibus, ſi non aſſit æquitatis cenſor qui legis regulis lites ſcit ſopire. Judicem igitur adire hujus cauſæ partibus neceſſe eſt, ſi pacem quam quærunt veritatis revelatione conſequerentur: ſolus namque Judex eſt qui auctoritate abſconditas referare poterit veritates, et legis cenſura litigia referare. Igitur quis Judex competens in hoc certamine eligi poterit, jam quæramus. Leges Civiles dicunt quod juſticia eſt conſtans et perpetua voluntas jus ſuum unicuique tribuens; quæ vero unicuique jus ſuum tribuit, et contendentibus hiis jus eam tribuere poſſe non ambigitur. Judex quoque Juſtitia eſt, nam judex quaſi *jus dicens* dicitur, et hæc jus dicit, cum ab ea, ut dicunt Leges generaliter, jus dicatur; ipſa profecto judex eſt omnium actuum humanorum a Summo et Omnipotente Domino conſtituta. Unde potentior eâ, aut in hac cauſa noſtra aptior, nequit Judex aliquis cogitari; nec ejus potentiæ obſtat quod feminæ a judiciali officio legibus repelluntur; nam licet nomen *Juſticia* generis ſit feminini, ipſa non eſt femina neque ſexus feminini, in virtutibus namque ſicut nec in ſpiritibus reperitur ſexus. Juſticiam igitur adeunt Partes predictæ, et ut earum litem ſententia ſua dirimere dignetur poſtulent cum effectu. Hoc igitur agere, ſano conſilio fretæ, mature properabant, ad eamque venientes pronæ in terra, hiis verbis ipſam alloquutæ ſunt; "O Judicum maxima, cui Dominus nedum, ut homini, regendi orbem, ſed et ipſum hominem politice regere contulit poteſtatem, compatere mundo ſub queſtionis noſtræ nebulis oberranti et velut turbido mari tempeſtate non minima concitato. Serena mentes hominum queſtionis hujus ignorantia tenebratas decreto tuo, hujus

ambigui referans veritatem. Eya, eya, Veni et judica cauſam noſtram, ac ſententia tua diffinitiva litem hanc diſſolve. In te enim conſentimus ut judicem, et hujus cauſæ conſtituimus te cenſorem." Juſtitia tandem benigna hæc mente complectens, ac tumultuanti mundo ſub ignorantiæ hujus caligine pio compaciens affectu, incolarum etiam regni quod jam petunt partes predictæ calamitate compuncta, dum eos ſub earundem partium evaginatis enſibus cernit formidine contrementes, judicii onus in hac cauſa ſuper ſe gratanter ſuſcepit, et pronunciato primitus pro ſua juriſdictione, terminum partibus ad ſuas peticiones in forma juris preponendum judiciorum more, aſſignavit. Quo adveniente, ipſâque in loco ad hoc deputato pro tribunali ſedente, partes antedictæ, Filia videlicet, Nepos, et Frater Regis coram eâ perſonaliter comparentes, ſinguli hereditario jure Regnum defuncti Regis ſibi adjudicari petierunt. Et primo Filia Regis Judicem alloquendo taliter exorſa eſt.

Cap. II.

Titulus Filiæ Regis.

PRUDENTISSIMA Judicum, Rectrix orbis terrarum, illuſtriſſimus olim Princeps Affiriorum Rex, totius Aſiæ Monarcha Majoris, dominus et pater meus non recognoſcens in temporalibus ſuperiorem, filium non habens in fata deceſſit, me que ſolam filiam ejus totius regni ſui reliquit heredem, quod, renitente natura, filius quem fuderunt viſcera mea, et jam adeſt coram te moleſte ferens, me excluſa, Regnum invadere et ut proprium poſſidere, quin verius uſurpare, auſus eſt. Similiter, et quod majus eſt horrendum, patruus meus etiam jam te coram preſens conſimiliter michi injuriatus eſt. Ipſe nec filium meum patitur Regno predicto titulo meo aut avito jure gaudere. Quid igitur juris ſit in hoc caſu, nos tres aſſenſu mutuo petimus, ut tua dignere ſententia diffinire. Omni revera eſſet miraculo mirabilius, ſi Nepos ex filia, vivente matre, in avi ſui patrimonium, ipſa excluſa, ſuccederet; ſed monſtro adhuc ſimilius foret, ſi, defuncti filia et ejuſdem filiæ filio, ſuperſtitibus, Frater decedentis licite ejus potiretur imperio. Num me ſolam mulierum repellit lex ab hereditate paterna, aut magnitudo hereditatis ſobolem exhereditare poterit, et fratrem patris ejus ditare patrimonio? Naturæ vero hoc non eſſet conſonum, et Divinæ legi foret maxime alienum. Nam Dominus in Numerorum libro, xxvij. C°. ſic ait, "Homo cum mortuus fuerit abſque filio, ad filiam ejus tranſibit hereditas;" qua ſententia neque regnandi faſtigium neque dominii cujuſque magnitudinem a filiæ ſucceſſione abdicat Dominus, ſed regni, ut alterius cujuſque privati dominii, Mulierem judicat fore capacem. Quid tunc differes, Judicum diſcretiſſima, ſanccire quod ſanxit Dominus? Clariſſima tibi patet lex quam Dominus declaravit; fac ergo ſecundum exemplar quod tibi in monte monſtratum eſt, et ne tardes hanc litem tuo finire decreto. Quæ audiens Filius, vultu in terram demiſſo, ex tunc oculos in Judicem erigens, ipſum taliter affatus eſt.

Cap. III.

Responcio Nepotis Regis ad primum quod allegavit Filia Regis.

VERISSIME, Judex optime, veritatem facti quo fuscitatur hæc discordia metuendissima Domina et Mater mea peroravit. Utinam legis ipsa sciret censuram, sicut et facti ipsa novit veritatem; non te tunc, ut estimo, causæ hujus ventilacio fatigaret. Ignorantia juris est et non facti quæ eam concitat ad hanc litem, non enim sine consule poterit simplicitas pia muliebris diversitatem noscere qualiter in regno, et qualiter in predio differunt jura succedendi. Non ut agrum ita officium, nec ut privatum ministeri um, ita et publicum regulat lex humana. Si enim hæc, ut se habent, mater intelligens mente ruminaret, citissime ipsa, ut suspicor, ab hac lite resiliret, et non filium culparet ut degenerem, quamvis avi sui regnum, quo matri non licet succedere, ipse ingrediens gubernare jam glisçat. Humile vero officium privatumque ministerium, in quibus admodum relevari per mulierem potest solicitudo viri, mulierem, quæ facta est in adjutorium ejus, natura non prohibet ministrare; talia namque officia muliebri sexui conveniunt, et mulierem ad ea natura constringit, quæ eam viro subdit subjectione yconomica et sociali. Hæc parentes Saræ uxoris Tobiæ junioris recte considerantes eam monebant regere familiam et gubernare domum. (Tobiæ x. C°.) Sed altiora et publica officia, quæ solis viris conveniunt, ut sunt Constabulariæ et Marischalciæ regni cujusque officia, a mulierum administracione natura sejunxit, quo talia officia ad eas descendere nequiunt, dum non nisi ad locum naturalem tendit omne quod descendit. Et si talia officia ad feminas descendere natura non permittat, quomodo Regis officium, quod publicum est et omnium terrenorum officiorum maximum, quod omnes regit homines nec ulli est subjectum, potest mulieri descendere aut convenire, quam viro natura subjecit? Non enim mulierem gladio audaciam hominis compescere, aut meritæ morti reos judicare natura patitur velle, et tamen hiis actibus nihil regali officio plus incumbit. Alienum igitur esse officium regium a ministracione muliebri omni modo judicat lex naturæ; nec enim, ut mater conqueritur, ipsam solam ab hereditate paterna lex amovet, nam omnes possessiones privatas patris sui, ut sunt edes, arva, et solum quodcumque, quorum capax est natura muliebris, ipsa possidet per me filium ejus minime præpedita. Nec magnitudo dominii, ut ipsa conjicit, ei ullatenus officit succedere in patrimonio patris; sed solum regalis supremma dignitas est quæ sibi conjungi refugit, sicut etiam uniri recusant officia virilia supradicta hæc, licet inculta ac humilia sint. In hujus tamen examinis initio quasi quædam meditantis unguenta sufficiant, quæ si non poterint maternæ ægritudinis delenire tumorem, ejus languori mederi curabimus fortioribus tunc pigmentis.

Cap. IV.

Reſponcio Nepotis ad ſecundum quod allegavit Filia Regis.

PRÆTEREA Divinum judicium quo, deficiente exitu maſculino, Dominus mulieres ſuis parentibus debere ſuccedere declaravit, non te movebit, Judex, qui judicii illius merita recto penſas libramine, nec te ulla Sacræ Scripturæ veritas ſubterfugit. Nam non te latet qualiter terram Chanaan Dominus Abrahæ Iſaac et Jacob et eorum ſemini promiſit hereditarie poſſidendam. Nec qualiter quinque filiæ Salphaad, qui de Manaſſâ filio Joſeph qui filius Jacob fuit deſcenderant, ipſo ſine maſculis in deſerto obeunte, a Moyſi flagitarunt, ut ipſis partem illam terræ promiſſæ quam, ſi adhuc vixiſſet, pater ipſarum fuiſſet habiturus, paterno titulo decerneret poſſidendum; cui cauſam hanc ad Dei judicium referenti ait Dominus, "juſtam rem poſtulant filiæ Salphaad, da eis poſſeſſionem inter cognatos patris ſui, et ei in hereditate ſuccedant; ad filios autem Iſrael loqueris hæc.—Homo cum mortuus fuerit abſque filio, ad filiam ejus tranſibit hereditas, etc." Nonne per hæc verba erudimur quod feminæ in Terra Promiſſionis non ut mares ſuccedebant, dum ipſe hereditates parentum cum maribus minime dividebant? ſed maſculis ceſſantibus voluit Dominus eas gaudere hereditate parentum. Et quid efficit hoc in caſu noſtro qui de regno litigamus? Non eſt regnum ut privatum patrimonium inter mares, quo nec inter feminas dividendum; *politicum* ſolum dominium eſt quod plures recipit rectores, ſed *regale* nunquam. Filii Iſrael, quando hæc ſententia lata eſt, regem non habuerunt, nec trecentis quinquaginta et ſex poſtmodum annis, ut numerat Sanctus Auguſtinus xviij. libro de Civ. Dei, et multo plures ponit annos Joſephus Antiquitatum hiſtoriagraphus. Quare de regni ſucceſſione, tempore quo Divina hæc ſententia lata eſt, non erat queſtio, quo nec ad regnum poteſt referri reſponcio queſtionis, quæ tale mulieribus jus contulit ſuccedendi. Etiam non niſi ſolis filiis Iſrael edidit Dominus hanc legem, dicens, "Ad filios Iſrael loqueris hæc," quo populus alius hac ſententia non ligatur. Unde aliæ ſunt gentes quam plurimæ quæ hucuſque lege hac non reguntur. Nam in regno Franciæ viri et feminæ paſſim dividunt hereditates paternas, et in regno Angliæ neque maſculi inter ſe dividunt hereditates, neque feminæ participant cum maribus, ſed filius ſenior omne obtinet jus parentum. Conſimiliter quoque fit in aliis quam plurimis provinciis et regnis. Privata inſuper patrimonia feminis ut maribus communicanda ſunt, ut habeant unde ſe poſſint ſuſtinere; ſed non ſic publica officia; nam de regno dicit Sanctus Thomas in tertio libro De Regimine Principum, quod illud non eſt propter regem, ſed rex eſt propter regnum; cujuſcemodi mulieres eſſe difficile eſt ſentire, cum eas magis regi quam regere deceat; nec regnum regere eis aut regno extat opportunum. Quare quamvis generaliter dicat lex predicta quod decedentis ſine filio hereditas tranſibit ad filiam, hoc de privatis tantum patrimoniis, quæ plebs et vulgus poſſidebant, et non de publicis

et regalibus dominiis, intelligendum fore dinoſcitur. Nam poſt hanc legem pronunciatam et ante regis creationem in Iſrael et ſemper poſtea, omnes poſſeſſiones privatæ cujuſcumque decedentis ibidem inter omnes filios, et illis deficientibus inter omnes filias equaliter dividebantur, excepto quod primogenitus recepit duplicia omnium bonorum defuncti. Nec legem illam mutandi amore filiæ carioris pater ullam habuit poteſtatem, prout Deutron. xxj°. C°. liquide declaratur. Sed de jure regnandi longe aliter Veteris Teſtamenti leges ſe habent. Nam regna Iſrael et Juda neque inter filios regum dividebantur, neque ſemper ad primogenitos, ymmo nunquam ad filias, deſcendebant; pater quoque cariorem ſibi filium, licet non primogenitum, aliquando regem conſtituebat, ut ex libris Regum patenter poterit edoceri. Conſimilem quoque differentiam inter perſonas publicas et perſonas privatas lex illa operata eſt, quæ licet quemlibet filiorum Iſrael extra Tribum propriam nubere indifferenter prohibuerit, Summos tamen Pontifices et Reges de quocumque Tribu uxores ducere permiſit. Per quæ conſtat quod lex predicta, quæ in Numerorum libro exprimitur, de poſſeſſionibus privatis loqui intelligenda eſt, et ad ſucceſſionem regnorum nullatenus ſe extendit, et per conſequens huic de quo loquuti ſumus juri in regalibus ac publicis dominiis ſuccedendi non derogat nec officere poteſt.

Cap. V.

Mulieres nunquam habuerunt Jus ſuccedendi in Regnis Iſrael et Juda.

INSUPER in tota Veteris Teſtamenti ſerie minime reperitur quod mulier jure parentum regnavit in Iſrael aut Juda. Sed mulieres in regnis illis ſuccedere non debere Teſtamenti illius ſacramenta copioſe nos informant. Primo quidem quia antequam filii Iſrael regem aliquem habuerunt, Dominus per Moyſen (Deutron. xvij. C°.) populo illi indixit, nullum ſibi aſſumere in regem, niſi quem Ipſe elegerit. Simuliter et qualiter rex ſic electus ſe haberet, Moyſes ibidem explanavit, monens quod ſic faceret rex prout ipſe ibidem docuit, ut ille longo tempore regnaret et filii ejus ſuper Iſrael. Ecce! filios regis regi ſuccedere poſſe, ait Moyſes; ſed filiabus ſuccedendi jus, ibidem aut alibi in tota Sacræ Scripturæ pagina, non legitur Dominum conceſſiſſe. Ad hæc, Ocharias Rex Iſrael ſine filio deceſſit, cui Joram frater ejus ſucceſſit in regno, prout ſcribitur iiij° Regum, i°. C°., ubi expreſſe ſcribitur eum non habuiſſe filium. Sed non ſcribitur neque filiam eum habuiſſe, quod ſcribi neceſſe fuiſſet, ſi per ejus mortem ad fratrem ſuum Scriptura illa regnum tranſtuliſſet, dummodo filiam ſibi ſuccedere licuiſſet. Sic quoque per hoc implicite edocemur, filiam ſibi non potuiſſe ſuccedere in regno. Similiter quotienſcumque Dominus regibus Iſrael pro eorum ſceleribus, ut Jeroboam, Bara, Achab, et aliis ydolatris, minatus eſt finem imponere regnis ſuis, totiens fere inter gravia minationis ſuæ verba, Ipſe ait quod non relinqueret de eis *mingentem ad parietem*; mingere quidem ad parietem virili ſexui convenit et non muliebri; ita diſtinguens Dominus ſceleratorum illorum filios a filiabus, ut canis maſculus

diſtinguitur a femella, quam diſtinctionem minime feciſſet, ſi femina ut maſculus perimendis illis regibus ſuccedere potuiſſet. Similiter et exterminatores regum illorum filios eorumdem et non filias occidiſſe leguntur, licet Achab, cujus ſeptuaginta filios Gihu occiderat, et alii, quorum filii quam plures interfecti ſunt, aliquas inter tot filios habuiſſe filias non dubitetur; et Athalia filia impiiſſimæ Jeſabel, quæ omne ſemen regium regni Judeæ ſe credidit occidiſſe, etiam et filios proprii filii ſui occidit, ut ipſa ſecurius regnum illud poſſideret; Jozoba tamen filiam Regis et Summi Pontificis uxorem nulla tenus ipſam occidere curavit; ex quibus et multis aliis quorum libri Regum habundant teſtimoniis erudimur, quod, licet in privatis patrimoniis Veteris Teſtamenti leges feminas parentibus ſuccedere conceſſerint, eas in Regnis ſuccedere leges illæ minime promiſerunt.

Cap. VI.

Titulus Nepotis ad Regnum Avi ſui.

PRÆTEREA ſicut non niſi primitus evulſis vepribus colonus terram ſerere properat, ſic nec niſi evacuatis primitus quæ ſuaſit Domina et Mater mea tempus affuit, ut titulum quo regnum vendico revelaſſem. Nunc igitur tempus inſtat congruum ut quo jure michi pertineat regnum Avi mei, etiam in vita genetricis meæ, ego pandam. Ipſa tamen jus illud non obſcure nec infime manifeſtavit, dum ſereniſſimum Principem illum Dominum et Avum meum, quondam Aſſiriorum regem, de regno illo ſine exitu maſculino obiiſſe poſſeſſum aſſeruit; quo dum illud ad eam, ex cauſis preoſtenſis, non poterat devenire, ad me Nepotem Regis illius, quem regnum poſſidere aliquod nullum jus proſcribit, illud deſcendere debet ſimiliter et deſcendit omni jure. Sic Dominus noſter Jeſus Chriſtus, vivente matre ſua, hereditario jure Rex erat Judeorum, quo eo in cunis vagiente dixerint Magi, "Ubi eſt qui natus eſt Rex Judeorum?" Nonne qui natus eſt Rex Judeorum nativitatis ſuæ tempore illud poſſedit regnum? quare cum patrem hominem Chriſtus non habuerat, jure parentum matris, dum Ille regnabat, regnaſſe Ipſum neceſſario confitetur. Ecce neutrum filium in vita matris licere regnare, ſed et matrem regnare non licere una eadem que Sacræ Scripturæ ſententia nos informat. Filius nominatur Rex Judeorum, ſed mater, quæ Regina Cœlorum eſt, nunquam regina dicitur Judeorum, nec in ſimul potuit ipſe Rex et mater ejus Regina hereditario jure unius fuiſſe gentis. Sic quoque caſus noſtri ambiguum ſi quod fuerit ſacra ſententia declaratur; et quale a te, Judex optime, petimus formari judicium, tale a Tribus Regibus, Spiritu Sancto afflatis et miraculo ad hoc inductis, antiquitus eſt prolatum; quo tibi in hoc certamine difficultas non remanet aliqua tenus judicandi. Judica ergo quod Spiritus Sancti dictamine indicatum eſt! Quæ audiens Frater Regis concitus ad Judicem ſic locutus eſt.

Cap. VII.

Propoſicio Fratris regis.

JUDICUM doctiſſima, quæ ut vir Divini conſilii arcana rimaris, quo tuæ eſt virtutis in contentione hac divinam ut humanam pandere rationem, revela tuæ ſapientiæ radiis veritatem Matris et Filii caliginoſa diſceptatione contectam. Ipſa namque mater, licet facti de quo contendimus veritatem retulerit, veritatem juris quam querimus ſub ingentibus erroris nebulis occultavit. At Filius, licet materni erroris quo ſe ledi veretur impatiens ſententiam in Numerorum libro pro mulierum ſucceſſione prolatam matri ſuæ patrocinari non poſſe in hoc conflictu inexpugnabili ratione probavit, et mulieren in regno ut in patrimonio alio ſuccedere non poſſe veriſſime aſſeveravit, juris tamen cauſam quæ eam ſic a regno repellit, neſcio quo favore ipſe quam tepide demonſtravit, ac ſe in regno, de quo fit queſtio, ſuccedere debere ſub quorumdam figmentorum umbra callidiſſime titulavit. Sed quia nihil ſcitur quod per cauſam non cognoſcitur, dicente Philoſopho in ij°. Metaph. "Verum neſcimus ſine cauſa, et tunc ſcire putamus cum cauſas ipſas cognoſcimus," ne filius materno favore allectus, aut ſpe ſuccedendi per eam in regno predicto, cupiat ſine predictæ cauſæ denudatione diſputationem hanc præteriri in juris mei et tituli leſionem, ego cauſam illam, ut potero, expliccabo: deinde titulum quem ipſe ad regnum finxit enarrare contendam. Quibus peractis, ſi neque Matrem neque Filium jus habere ad regnum predictum recte probaverim, ad me Fratrem Regis defuncti pertinere Regnum ejus hereditario jure diffinitiva ſententia poſtulo ut declares.

Cap. VIII.

Primo oſtendit cauſam quare femina non ſuccedit in Regno, ut in alio dominio.

PHILOSOPHUS in libro De Animalibus dicit, quod mulierum membra quæ ad actus generationis geſtûs et nutrimenti prolis ordinantur, ut ſunt venternates et mamillæ, groſſiora ſunt quam virorum, ſed cetera earum membra, ut manus pedes lacerti et crura, minora exiſtunt quam virorum; ſcilicet oſſa et nervi, in quibus conſiſtit fortitudo, minora ſunt debiliora et minus virtuoſa in feminis quam in viris. Dicit etiam quòd mulier eſt "mas occaſionatus;" unde ſicut ipſa deficit in complexione, ſic et in ratione; et quòd propter defectum caloris et complexionis ipſæ ſunt timidæ et nimis pavidæ mortis. Nunquid tunc ſicut ex hiis ſentire valemus quod forma et quantitas ventrum, natium, et uberum mulierum earum officia demonſtrant a virorum officiis in quibuſdam naturaliter eſſe diſtincta, ſic et quantitas atque robur aliorum membrorum in viris eorum declaravit officia ab officiis mulieribus in quibuſdam naturaliter eſſe diſcreta? Nam ſic

leonum ungulæ dentes et maxillæ, qui fortiores ſunt et majores quam rapacium aliarum ferarum, eorum prædam oſtendunt eſſe majorem et fortiorem quam quæ a feris aliis devoratur; ſic aquila milvo roſtro et ungulis fortius armatur; ſic et maris bellua magnitudine et viribus quos devorat preeminet piſcibus; ut non ſit vivens animal, avis, aut piſcis, quod non ejus organis formâ aut virtutibus deſignet officium ad quod ipſum natura creavit, quæ, ut ibidem libro octavit dicit idem Philoſophus, dat omni animali membra convenientia operi ad quod ipſa illud produxit. Quis unquam artifex formavit inſtrumentum quod non conveniat operi quod ipſe facturus eſt? Sic ſecuris ad ſecandum aptatur, et obtuſa vanga diſponitur ad fodendum. Quare dum mulierum illa reliqua membra minora ſunt quam virorum et minus virtuoſa, ad minora et inferiora officia quam viros mulieres eſſe conditas earum corporum organa et vires manifeſte demonſtrant. Unde Sanctus Thomas in quarto libro De Regimine Principum ait, quod ſicut in policia officia ſunt diſtincta, ſic et in yconomia illa dividuntur. Nam paterfamilias ad exteriora negotia et mulier ad interiores familiæ actus intendunt. Unde mulieris officium eſt, ut ipſe ibidem refert, in domo quieſcere et curam gerere rei familiaris. Quare Salomon in fine Proverbiorum mulieris fortitudinem ad hoc ſolum attribuens eam de familiari cura quaſi de ſumma officii ejus eximie commendavit, componens, ut ipſe ait, inde tractatum et Canticum ſub litteris Hebreicis alphebeti, qui ſic incipit, "Mulierem fortem quis inveniet?" in quo ille totum mulieris regimen refert ad domeſticam accionem, ut ex littera diligenter conſideranti patebit. Quare Sanctus ille, dum mulierem viro naturaliter ſubdi declarat, eam ſubjici dicit ſubjectione yconomica, ſic que ſolum yconomicum et domeſticum cenſetur eſſe omne officium mulieris, maxime cum non ad alia natura ei dederit inſtrumenta. Quare quid ſit Regis officium convenit a modo explicare, ut ſi illud adminiſtrare poſſit mulier, inde doceatur. Apoſtolus vero ad Romanos (xiij. C°.) loquens de regis officio inter cetera ita dicit, "Non enim ſine cauſa gladium portat, Dei enim miniſter eſt, vindex in iram ei qui malum agit." Similiter et Sanctus Petrus in prima Canonica ſua (C°. ij.) dicit, "Subjecti eſtote omni humanæ creaturæ propter Deum, ſive regi quaſi precellenti, ſive ducibus quaſi ab eo miſſis ad vindictam male factorum, laudem vero bonorum;" ex quibus verbis erudimur regis officium eſſe, malos gladio comprimere, et bonos defendere et fovere: quo rex nedum pugnandi ſed et officium habet judicandi. Unde filii Iſrael petentes ſibi regem dixerunt Samueli, "Judicabit nos rex noſter et egredietur ante nos et pugnabit bella noſtra pro nobis." (Primo Regum viij. C°.) Ecce bellare et judicare ſunt officium regis! Numquid tunc officium iſtud exercere poterit mulier aut capax hujus officii eſt ſexus muliebris? Nam pugnare maximum eſt quod agit corpus humanum, et judicare eſt ſuppremum quod operatur ſpiritus. Ad officia maximorum actuum corporalium aptavit natura virorum membra, quæ majora et robuſtiora fecit quam conſimilia membra mulierum; et ad maxima opera ſpiritûs natura dedit viro perfectam rationem, in qua a viro ipſa minuit mulierem. Numquid non tunc hos actus maximos corporis et ſpiritûs viro et non mulieri natura conceſſit, cum eos exercendi ſoli viro ipſa dederit perfectam

Pugnare et judicare ſumma ſunt actus hominum et maximæ fortitudinis et virtutis.

poteſtatem? Quis unquam faciet quod ipſe facere nequit? Ad hos actus faciendos natura mulieri non dedit organa ſeu virtutem. Sic ergo regis officium, quod ſolum hiis ſummis hominum actibus excercetur, ſoli viro natura conceſſit, et muliebrem ſexum inde fecit alienum. Nunquid tunc non recte jam oſtendimus cauſam, quare mulieres in regali officio, etiam et in conſimilibus officiis preoſtenſis, ſuccedere non poſſunt parentibus ſuis, dum quod natura disjungit conjungere non poterit jus naturæ.

Cap. IX.

Hic apercius revelat cauſam predictam et probat Filiam Regis non habere cauſam querelæ.

SOCRATES et Plato mulieres ad bella progredi ſanccierunt eſſe politicum. Sed Ariſtoteles in ſuorum Politicorum ſecundo libro eorum opiniones veriſſimis argumentis dampnavit; ſic et fecit Sanctus Thomas in predicto quarto libro ſuo; nam neque viribus congredi cum viris mulieres ſufficiunt, quibus natura viros conſtituit fortiores, neque terribiles caſtrorum acies invadere audent, quas pavidas natura creavit, neque bellorum pericula ipſæ evadere poſſunt, quas ut viros natura non fecit eſſe diſertas. Qua etiam ratione nec ipſæ judicare poterunt, cum judicium ſit humanorum maxime diſcretivum. Hæc etiam conſiderantes legiſlatores non permiſerunt mulieres eſſe judices, neque publici officii gerere magiſtratum, et per conſequens nec regalis officii cura illis videtur eſſe relicta. (ff. De Regulis juris, Lege *Feminæ:*) Similiter et ſancti Canones predicta officia mulieribus abdicarunt. (xxxiij°. Q. v. Ca°. *Mulierem.*) Preterea cum natura, ut dicit Philoſophus, in omnibus operetur optime, eo quod ipſa dirigitur ab Agente infallibili, ſimiliter et ipſa non deeſt in neceſſariis, ut Sanctus Thomas ſepius recitat in libro predicto. Si mulierem imbecillem, timidam, et in ratione minus perfectam, ad officium maximæ fortitudinis, audaciæ, et gravitatis natura ordinaſſet, non omnia illa operata eſſet optime, ſed et in neceſſariis ipſa defuiſſet, tribuens tanto officio ineptum, inconveniens, et inſufficiens inſtrumentum. Philoſophus etiam ſecundo Politicorum dicit quod a mulieribus male regitur civitas. Dubitari tunc non poterit quin ab eis pejus regnum regeretur. Et dum ipſe primo Politicorum dicit quod conſilium mulierum invalidum eſt, heſitare nequimus quin earum regimen maxime ſuper regna multo foret invalidius. Quare ſi quando mulier officium tale ſurripuerit, non naturæ virtus hoc fecit ſed iniquitas animi illud male ambientis. Ultra hæc, ars, ut dicit Philoſophus, etiam et Sanctus Thomas, imitatur naturam in quantum poteſt; at natura nihil operatur niſi convenientibus et aptiſſimis inſtrumentis, quo nec ars quæ naturam imitatur. Quis unquam mureligis lepores venatur? leporarios ad campos et lepores capiendos natura diſponit, ſed mureligos domi manere ad capiendos mures. Propudor! Quaſi cum mureligis feras venatur qui feminam, quam tamen ad domeſticam curam natura diſpoſuit, educit a domo ad regendas gentes. Natura ad hoc eam non fecit congruum inſtrumentum. Artifex tam

improvidus non eſt, ut cum vanga ipſe ſcinderet ligna, nec nauta tam negligens quod ad paralitici manus ipſe committeret remum. Aſſeres aſſeribus faber poteſt glutino conjungere, ſic et latomus lapides unire poteſt lapidibus cum cemento, ſed cum cemento aut glutino aſſeres lapidibus faber aut latomus jungere non valebit; nam ars non conjungit aliqua quæ omnino natura disjungit. Ecce jam enucleatur cauſa ſufficiens cur mulier ſuccedere non poterit in regno, maxime cujus rex ſuperiorem neſcit; quo Matri non relinquitur materia querelandi. Quare ſolum Filii perſuaſiones jam remanent abſolvendæ, quæ duo referunt--nepotem, videlicet, ex filia in vita matris avo debere ſuccedere; et Chriſtum, matre ſua ſuperſtite, in Regno Juda conſimiliter ſucceſſiſſe; ad quorum primum ſic progredior.

Cap. X.

Hic probat Filium non poſſe ſuccedere in Regno jure materno.

SI terram dederit quiſpiam homini et heredibus ſuis maſculis de corpore ſuo exeuntibus, et homo iſte filiam habens ſine filio deceſſerit, terram hanc ad donatorem reverti debere non ambigitur; quia donum iſtud conditionem habet implicitum, licet non expreſſam, videlicet quòd ſi donatarius ſobole caruerit maſculino, terra hæc donatori jure ſuo priſtino revertetur. Ac idem donum talem terræ illi legem tacite confert, quòd non niſi maſculina donatorii proles terram illam poſſidebit. Et ſi filia predicta poſt patris ſui obitum viro nubat, de quo ipſa filium ſit enixa, filium hunc terram predictam a donatoris poſſeſſione diſracionare non poſſe, cum ipſe illud juſte tunc poſſideat, dubitare nequimus. Quid tunc donatoris juri derogare poterit, ſi filia hæc in vita patris ſui hunc filium ex legittimo thoro genuerit? Num feſtinatus ortus ejus prejudicare poterit juri alterius, qui nihil ad ejus contulit genituram? Quam ſtolidum revera foret rem hujuſmodi ſuſpicari! Nec in hiis latere nobis poterit certitudo legis, cum caſus hujuſcemodi in omnibus fere mundi regnis quam ſepius accidant: quo judicum ſententiis certitudo illa ſepiſſime revelatur. In Regno namque Franciæ, cum reges dominia ſua dederint in forma preſignata, et donatarii poſt ſe filias reliquerint ac obierint ſine fetu maſculino, reges regni illius dominia illa concito reſumunt, et ea ex tunc retinent priſtino jure coronæ ſuæ, nullo huic juri unquam renitente. Et licet ex ſolita ibidem conſuetudine quæcumque poſſeſſiones inter filios et filias decedentis paſſim dividantur, filiæ tum non participant cum maſculis in patrimoniis ſic donatis, nec filiarum filii aliquid inde habent cum avunculis ſuis; ſimiliter et in Regno Angliæ, ubi donum hujuſmodi *donum talliatum* vocitatur. Et ubi ſolum filius ſenior ſuccedit in hereditate paternâ, ſi donatarius talis duos habuerit filios, quorum ſenior filiam genuerit quæ filium pareat, ſi ſenior filius ille orbatus filiis moriatur, hereditas ſic talliata poſt mortem donatarii ad filium ejus juniorem deſcendet, et nihil inde penitus participat filia fratris ſui ſenioris, neque filius ejus. Hæc ſatis novit Scriptor horum, qui pluſquam quadraginta annis ſtuduit ac ſe exercuit in

Legibus Regni illius, et tandem Judiciario officio ejuſdem terræ ſuppremo diu functus eſt. Quid tunc differt caſus de quo contendimus a caſubus jam notatis? Nonne ſicut regnum ſuperiorem neſciens ſolis maſculis deſcendere debere probatum eſt, ſic et terram homini collatam in forma jam ſpecificata a ſolo ſexu maſculino hereditari poſſe ſimiliter eſt oſtenſum? Quare à ſimili, ſicut terra hæc non poteſt ad nepotem ex filia deſcendere, ſic nec regnum, quod conſimili jure poſſidetur, deſcendere poteſt ad nepotem qui jam contendit.

Et quomodo poſſit mater ad filium jus transfundere, quod ipſa habere nequit? Regula Juris eſt, neminem poſſe plus juris transferre in alium quàm ſibi competere dinoſcatur. Omni profecto monſtro mirabilius foret, ſi femina pareret nunquam fœta, et fieret mater citius quàm fecunda, neque prodigioſum minus eſſe poterit, ſi filius nedum mamillas ſteriles ſed et fugeret mel de petra. Hæc cum naturæ omnino repugnent, judicare fieri nequit lex naturæ; ſic nec a femina, quam regnare prohibet natura, tranſduci poterit ad filium jus regnandi. De hiis vero amplius differere non expedit nec delectat; ne dicant audientes, Quid ſatagit hic manifeſtam ornare veritatem? Nunquid argumentis radios ſolis ipſe purgabit? Defino igitur, et ad ſecundum quod Nepos protulit propero improbandum; cum prolixiorem multo ratiocinandi modum illud poſtulet quam hæc tam nuda; et non ſine Sacræ Scripturæ ductu illa poterint explicari.

Cap. XI.

Hic oſtendit Chriſtum non fuiſſe Regem Judæorum jure materno.

SI Dominus noſter Jeſus Chriſtus jure parentum ſuorum Rex fuiſſet Judeorum, ut aſſerit Nepos regis, cur non conſimiliter ipſe nepos jure parentum ejus ex parte matris ſuæ Rex eſſet Aſſiriorum, ratio non poterit explicari; tamen ſi alio quam ſucceſſionis jure Chriſtus Rex extiterat Judeorum, regnum Ejus in hoc certamine nepoti predicto minime ſuffragatur. Conſtat profecto et firmiter credimus Chriſtum fuiſſe Regem Judeorum; nam Eum ſic futurum, antequam conciperetur, Angelus promiſit, dicens, "Dabit illi Dominus Deus ſedem David patris Ejus, et regnabit in domo Jacob in eternum et regni Ejus non erit finis." Et poſtquam Ipſe natus eſt, Magi Eum nedum jure ſed et re fuiſſe Regem Judeorum affirmaverunt, dicentes, ut ſuperius recitatur, "Ubi eſt qui natus eſt Rex Judeorum?" Aliis quoque quamplurimis Sancta habundat Scriptura ſacramentis, quibus clariſſime edocemur Eum indubitanter fuiſſe Regem Judeorum. Sed tamen Eum hereditario et temporali jure ſucceſſionis Regem fuiſſe Judeorum Sacra non pandit Hiſtoria; nec illud Doctorum Catholicorum ſententiis eruditur. Sed Evangeliſta Matheus in initio Evangelii ſui oſtendit Joſeph virum Mariæ, tempore nativitatis Chriſti, Regni Judeorum verum fuiſſe heredem, ac verum heredem ſingulis regibus qui ibidem a temporibus David et Salomonis, quibus conceſſum et confirmatum fuit regnum illud a Domino, uſque ad tranſmigrationem Babilonis regnaverunt, et eundem Joſeph de omnibus regibus illis linialiter deſcendiſſe. Ac licet poſt tranſmigrationem illam uſque ad

Chriſti adventum non fuerat aliquis de lineâ regum illorum nominatus rex Iſrael aut Juda, ſeu diademate Regio inſignitus, tamen Evangeliſta prædictus oſtendit jus regnandi ab ultimo ibidem regnante ante tranſmigrationem illam ad Joſeph prædictum rectâ lineâ fuiſſe delapſum, ipſum quoque Joſeph ab omnibus medio tempore illo jus ad regnum Judeorum habentibus conſimiliter fuiſſe progreſſum. Similiter et de Juda filio Jacob de quo prophetavit pater ejus dicens "Non auferetur ſceptrum de Juda et dux de femore ejus, donec veniat Qui mittendus eſt, et Ipſe erit expectatio gentium." Ac ipſum Joſeph tempore Dominicæ nativitatis, et diu poſtea, fuiſſe ſuperſtitem, idem Matheus manifeſto revelat. (Mathei ij°. C°.) Quare cum duo ſimul et inſolidum hereditariâ ſucceſſione non potuerunt fuiſſe reges Judeorum, et ad Joſeph jus regnandi ibidem deſcendiſſe ex Evangelio ſit probatum, dum Magi Chriſtum in vitâ Joſeph fuiſſe Regem Judeorum affirmarunt, alio quam hereditario deſcentionis titulo Eum ibidem regnaſſe neceſſario confitentur; qualem Eum habuiſſe titulum jam conſeſſi ſumus dum diximus, quòd, antequam Ipſe conciperetur, Dominus promiſit ſe daturum Ei ſedem David patris Ejus, qui rex Iſrael erat, quo et Judeorum, et quòd regnaret in domo Jacob, qui et Iſrael nominatus eſt, in eternum, et regni Ejus non eſſet finis. Sed cum eternum eſſet et ſine fine Regnum Ejus, quale humanum regnum eſſe non poterit, non inconvenienter intelligi poterit Chriſtum fuiſſe ſpiritualiter Regem Judeorum, de quali regno quotidie dicimus Deo, "adveniat Regnum Tuum;" quod regnum hic in viâ venit et recedit. Et Ipſe Chriſtus interrogatus a Pilato, ſi Rex eſſet Judeorum, non hoc negando, ait, "Regnum Meum non eſt de hoc mundo." Non enim ait, Regnum Meum non eſt *in* hoc mundo, ſed dixit, Regnum Meum non eſt *de* hoc mundo. Vero de hoc mundo et in hoc mundo fuiſſet Regnum Ejus, ſi jure materno aut alio quocumque temporali Ei ab homine deſcendiſſet Regnum Judeorum. Sed profecto nedum ſpiritualiter, ſed et temporaliter, realiter, et de jure, Ipſe fuerat Rex Judeorum, de quali regno Ipſe a Pilato interrogatus noluit jus Suum diffiteri, ſed ait, "Tu dicis quia Rex ſum ego; Ego in hoc natus ſum et ad hoc veni in mundum ut teſtimonium perhibeam veritati." Voluit Ipſe namque ſedens ſuper aſinum Rex appellari: cui et populus dixit, "Benedictus qui venit in Nomine Domini Rex Iſrael;" et de quo Propheta ait, "Noli timere, filia Syon, Ecce Rex tuus venit tibi ſedens ſuper pullum aſinæ." Nam ante regem Iſraeli populo conceſſum Dominus per Moyſen neminem conſtitui eis in regem niſi quem Dominus dirigeret diſtricte mandavit. (Deutron. xvij. C°.) Quare Saulem primum eorum regem Ipſe Dominus elegit, ungi fecit, et conſtituit Regem. Sic et David, ſic et Salomonem, Jeroboham quoque et Hiæu, ac nonnullos alios Ipſe fecit reges Iſrael et Juda, qui non ſucceſſionis titulo ſed tamen Divinæ Conſtitutionis jure reges ibidem effecti ſunt. Quare, licet non jure ſucceſſionis temporali, Chriſtus tamen temporaliter, ſimiliter et ſpiritualiter, Rex fuerat Judeorum et totius mundi a Domino conſtitutus, Cujus Regni non erit finis, et Cujus eſt Summus Pontifex Vicarius in terris, ſummam habens poteſtatem, cui omnis poteſtas terrena, uſque ad pedum oſcula, eſt ſubjecta. Quare abſit tunc ſentire hanc tam celſam poteſtatem fuiſſe ab homine temporali ſuc-

ceſſione progreſſam. Nec diffinitis refragari poterit quod Matheus in exordio Evangelii ſui generationem Chriſti promiſit ſe texurum ; quod minime ipſe profecturus eſt, ſi genealogiam Joſeph et non Chriſti ipſe detexerit, quale de eo ſentire nephas eſſe ſentiretur. Nam omnes quos ipſe nominat genitores ab Abraham uſque ad David incluſive, cujus David filius Chriſtus ſepius nuncupatur, fuiſſe Chriſti progenitores nulli dubium eſt. De reliquis vero, ut de Salomone et de cunctis ab eis deſcendentibus uſque ad Joſeph, an eorum aliquis progenitor Chriſti fuerat vel non, Evangeliſta explicite non revelat ; implicite tamen Chriſtum de eadem progenie de qua et Joſeph natum oſtendit, dum Joſeph virum Mariæ apellat, quam ſi de tribù ſua non fuiſſet, duxiſſe non licuit in uxorem ; cum per Moyſen dicat Dominus Numeri ultimo, " Omnes viri ducant uxores de tribu et cognatione ſua, et cunctæ feminæ maritos de eadem tribu accipiant." Quare Mariam Matrem Domini de eadem fuiſſe tribu de qua et Joſeph, videlicet de tribu Juda, Evangelium illud ſufficienter declarat. Similiter et de David eam deſcendiſſe credimus, dum Chriſtus tam crebo filius David nominatur, tamen eam a Salomone aut ab aliquo exitu ejus deſcendiſſe ex Evangelio predicto non docetur. Quare cum Lucas Chriſtum de Natan, qui erat ſextus filiorum David, deſcendiſſe ſcripſerit, ut patet Lucæ iij. C°., creditur eam Sanctam Mariam de eodem filio fuiſſe progreſſam nobis etiam revelaſſe, quo ex fratribus duobus filiis David concipi poteſt Joſeph et Mariam proceſſiſſe. Sed quia Joſeph a Juda filio Jacob per lineam maſculinam deſcendiſſe Matheus oſtendit, Mariam et Filium ejus a ſucceſſione hereditaria regni Iſrael et Juda, vivente Joſeph, idem Matheus patenter excludit, cum, exiſtantibus maribus, feminæ in hereditatibus filiorum Iſrael non potuerint ſucceſſiſſe, ut in predicto xxxij. Numeri C°. manifeſtiſſime declaratur. Quare cum Chriſtus non temporali ſucceſſionis titulo, ſed Divinæ tantum conſtitutionis jure, Rex fuerat Judeorum, Regnum ejus Nepoti predicto ſuffragium aliquod preſtare non poterit in hac lite.

Cap. XII.

Titulus Fratris Regis ad Regnum quod petitur.

OSTENSO jam clariſſime que probato Neptem meam, Filiam regis, patri non poſſe in Regno ſuccedere, quo nec in Filium ſuum ipſa poteſt jus ſucceſſionis transfundere, ad me Fratrem regis regnum ejus omni jure pertinebit, prout conſimiliter pertinere oſtendimus hereditatem in forma prenotata heredibus maſculis talliatam. Et quamvis expenſas ac dampna, quæ actione injuriæ in hac parte illatæ ſuſtinui, juris vigor michi cum regno concederet, conſiderata tamen ſanguinis propinquitate qua invicem ſinguli contendentes attingimus, ſolum Regnum eſt, Judicum rectiſſima, quod michi depoſco tua ſententia judicari, quo tuo decreto orbi univerſo juſtitiæ veritas de cetero in caſibus conſimilibus innoteſcat.

SEQUNTUR REPLICATIONES CONQUERENTIUM VIDELICET CUJUSLIBET EORUM CONTRA ALLEGATA CETERORUM.

Cap. XIII.

Replicatio Filiæ Regis.

AT Filia regis hæc diutino recolecta silentio, quasi a singultu in vocem suspiriis resparsam, prorupit, dicens, Compatere, compatere infelici mihi Judicum piissima tantis calamitatibus lacessitæ. Contra unam duo dimicant, mulierem solam viri duo insultant, matri injuriatur filius, et neptem exheredare gliscit patruus ejus. Sed et unum est quod exaggerat cumulum mœroris mei; filius, qui baculus esset senectutis meæ, factus est mihi malleus conterens et comminuens omnia solacia vitæ. Quis audivit talia, dic rogo, facta? Ecce in vita parentis filius nititur hereditario jure ejus dominium possidere! Per mortem vero descendit hereditas omnis, sed per vitam nunquam. Ut fenix avis unica jus foret filii mei, si obtinere poterit quod intendit; nam jus simile mundus non agnovit. Quæ lex jus tale potuit peperisse? Revera non lex naturæ; et tamen sibi soli relinquitur cura nostri casus; lex namque illa, licet dudum omnia fecerat communia, tamen post hominis reatum ipsa omnia appropriavit sudantibus quæ ipsi justo labore adepti sunt. Quo fundum qui patris industria adquiritur, moriente eo, filio quasi paterni sudoris participi successionis titulo lex illa distribuit. Sic Isaak, sic Jacob, sic et filii ejus terram quam emit Abraham pro sepultura possederunt. Sic et, licet scelerati, filii Cayn civitatem quam ipse condidit juste occuparunt; sed in vita Abraham aut nequissimi Cayn filiis eorum auferre non licuit aliquid quod ipsi justo labore nacti sunt, nec aliquo titulo alio quam ex juste possidentis dono potuit possessio hujusmodi per legem naturæ in alium transportari. Quo tunc jure poterit regnum patris mei, quod michi hereditario debetur titulo, in filium meum me vivente transferri, cum illud ei non dederim, nec successionem concedit lex in vita parentis? Humanum vero sensum exsuperat hoc pandere ratione. Et filio meo in contentione hac subvenire non poterit illud super quod ipse tam anxiè, ut maximum tituli sui fulcimentum, appodiavit, dicens, quod Christus in vita matris suæ hereditario jure Rex fuerat Judeorum; nam hoc magnus avunculus ejus ut errorem nephandum inexpugnabilibus argumentis dampnavit. Quare jam non relinquitur ei subsidium aliquod cui pro sui erroris defentione ipse poterit inniti. Impone igitur ei, Judex disertissima, silencium in hac lite, dum solum post mortem meam sibi competere poterit jus ad regnum. Sic que, silente eo, quietius hanc litem valebis dirimere, et ego pacacius ad objecta Patrui potero respondere.

Primo ipsa probat filium in vita ejus non posse succedere.

Cap. XIV.

Hic ordinat Filia Regis proceſſum quo intendit procedere.

TAMEN ne te moveant, Judex, quæ propoſuit Filius argumenta, ea nedum ſed et omnia quæ ſuaſit avunculus meus, uno ſub contextu enervare conabor. Duæ tantum cauſæ, licet multis diſſertationibus explicatæ, coram te panduntur, quare feminæ in regnis, ut in hereditatibus aliis, parentibus non ſuccedant; quia videlicet fortitudine et ratione natura eas a viris minoravit, quo ipſas viros bello ſuperare, aut in foro dijudicare natura non ſinit; et tamen ſola duo hæc regis conſtituunt officium; quare ea non poſſe peragere, etiam regis eſt non poſſe officio fungi. Hiis igitur cauſis recta ratione eliſis, amborum contendentium argumenta, quæ ab eiſdem dependent, etiam abſolvuntur. Quare cauſas has primitus improvare contendam, deinde muliebrem ſexum, ut virilem, regalis officii eſſe capacem, ut potero, demonſtrabo.

Cap. XV.

Jam ipſa reprobat cauſas quæ muliebre regnum impedirent.

SI ex cauſis hiis duabus ſequeretur quod feminæ ſuppreme non regnarent, ſequeretur etiam ex eiſdem quòd infantes, decrepiti, et languore nimio tabeſcentes, cum et ipſi pugnare aut judicare libere nequiant, ut viri valitudine et ætate perfecti, a regnandi faſtigio pellerentur; quo nec ſucceſſionis titulo poſſiderentur regna, cum non ſemper ſapientes et robuſtos reges poſt ſe hæredes relinquant. Quare cum hæc juſta non ſint, nec ex cauſis predictis poterit concludi feminas a regali dignitate repelli debere, cum iſtud et illa cadant ſub ejuſdem equitatis ratione. Naturale dominium, quod erat tempore humanæ innocentiæ et, ut dicit Sanctus Thomas, conſiſtebat in officio conſulendi et dirigendi, ſemper per ſapientes fuiſſet adminiſtratum, (de quali dominio Philoſophus in Politicis loquens dicit, quòd vigens intellectu et induſtriâ eſt naturaliter dominus,) ſed dominium poſitivum et particulare, quod poſt peccatum ab hominibus eſt homini impoſitum, quandoque per ſapientes, quandoque per fortes, quandoque per neutros, ſæpe vero per ſegnes et inhertes exercetur; nam illud ſucceſſionis quandoque titulo, quandoque electionis, et non ſemper merito virtutis eſt poſſeſſum. Quare licet ſummo agere in officio quolibet expediat, ita tamen ſemper agere nec hominis ſinit infirmitas, nec officii debitum hoc depoſcit: bene namque agere in omni miniſterio ſufficit miniſtranti, quod et poteſt facere femina etiam in ſtatu et dignitate regali; non enim perſonaliter præliare aut judicia reddere exigit regalis cura; ſufficit enim regi actus hujuſmodi per ſufficientes explere vicarios. Sic David per Joab quam plurima bella peregit.

Sic Juſtinianus Auguſtus, condendis intentus legibus, per Bellifarium quam plurima regna ſubegit. Reges etiam per Judices legis ſuæ peritos melius ſæpe quam per ſe ipſos judicant ſubditorum cauſas. Quis unquam Judicum melius Debbora feminâ ſapiente judicavit populum Iſrael? Quis fortius Tomyre Maſſagetarum reginâ, quæ Cirum Perſarum regem ac totius Aſiæ monarcham occidit, pugnavit bella populi ſui? Quis ſtrenuè magis quam Semiramis, dudum conſors Nini totius orientis Principis, gentes ferro perdomuit, quæ ut Aſiam etiam et Ethiopiam ac magnam partem Indiæ vibrato enſe tremere compeſcuit? Nonne et Amazonum regnum, quod ſemper a feminis regitur, contra omnes mundi dominos fortiſſime ſe defendit? Non ſufficeret profecto membrana hæc mulierum nobilium quæ ſtrenue et perjuſte populos rexerunt, ſi commemorentur, nomina continere. Quid tunc me abjicere nituntur filius et patruus mei ab officio in quo mulieres tot tam egregie claruerunt? Numquid, ut dixi, me unquam excluſit lex quæ tot mulieres regnare permiſit? Judica igitur et diſcerne cauſam meam, Judicum æquiſſima, et conſidera quot Ducum, quot Marchionum et quot Comitum, qui ut Reges ſuppreme regunt et judicant populos ſuos et eorum præliantur bella per orbem, filiæ ſuccedunt in dignitatibus et dominiis parentum ſuorum; et tamen inter earum titulos et meum nulla diſcrepantia reperitur. Et quid ſi regnum Iſrael aut Juda ad feminas, ut dicit filius meus, non legitur deſcendiſſe? Reverâ nec legitur aliquos regum ibidem filias habentes ſine maſculis deceſſiſſe. Clarum eſt igitur judicium quod tu reddes in contentione hac, ſcientiſſima Judicum. Redde igitur, et non differas perſuaſionibus talibus fruſtrata veſtris.

REPLICATIO NEPOTIS REGIS AD ALLEGATA MATRIS SUÆ.

Cap. XVI.

Primo oſtendit quod non ut hæres Matris ſed ut hæres Avi ipſe vendicat regnum ejus.

HÆC Filius profundâ librans mente modeſto geſtu Judicem ſic affatur. O Juſtitia, ſi tuæ non contemplarer conſtantiæ gravitatem, terrerent me forſan motiva matris meæ. Sed in hoc ſolidatur mens mea, quòd non tinnientes verborum ſoni ſed ſententiarum gravitates ſunt quæ delectant animum tuum. Non enim ego, ut concipit mater mea, ſimiliter et patruus ejus, materno jure poſtulo regnum avi mei. Quis non inſanus jus vendicat per eum quem ipſemet omni jure vanum eſſe dijudicat? Non enim mihi ignorata eſt famoſa illa Juris Regula, quæ neminem in alium plus juris transferre poſſe proclamat, quàm ſibi competere dinoſcitur. Igitur non jure matris meæ, quod nullum eſt, ego depoſco regnum avi mei, ſed ſucceſſionis titulo michi per eam ab avo meo delapſo, ut hæres ejus

vendico regnum unde ipſe obiit inveſtitus, quod et ſic michi per eam deſcendiſſe debuit, licet ipſa in vita avi mei ab humanis deceſſiſſet. Nam ſi non ex filia, ſed de filio qui in vita avi mei obiiſſet, ego ejus nepos fuiſſem, utique ei in regno jure hereditario ſucceſſiſſem per medium patris mei, qui nequaquam in regno illo jus habuit, nec illud dandi aut in alium transferendi unquam habuit poteſtatem. Quare tunc non conſimiliter eidem avo ego ſuccedere poſſim per medium matris meæ, licet ipſa in regno ejus jus non habeat, nec illud dandi aut concedendi unquam habuit poteſtatem? Solum namque medium et vehiculum ipſa eſt per quod avitum regnum ad me eſt ex lege naturæ tranſvectum, ſicut funis vel cordula vehiculum et medium eſſe poterit per quod trabes ab alto ducta in edificio humili valeat collocari, cum funis vel cordula illa edificii materia non exiſtat; ſic et glutinum ligna conjungit, lignum non exiſtens. Ac propinquitas ſanguinis, quam mater a patre contrahit et transfert in filium, quaſi glutinum eſt per quod regnum avi conjunctum eſt nepot. Sic quoque ſonus medium eſt per quod verbum tranſit in auditum, et contractus eſt medium per quod rei proprietas a domino ejus in ementem eſt tranſlata. Quare titulo meo jam non obviant quæ formaverunt Mater et Patruus argumenta, dum nec in vita nec poſt mortem matris meæ, jure ejus michi pertinere vendico regnum avi mei. Sic quoque clarum jam tibi eminet, Judicum optima, jus meum ad regnum quod petitur, dum tamen matrem meam in eodem non poſſe ſuccedere liquide valeam comprobare, quod et facere ſic aggredior.

Cap. XVII.

Solum propria dicta Filius coroborare intendit.

NON cauſæ illæ duæ, quas tam argute jam evacuavit mater mea, a me propoſitæ ſunt; ſolum a me dictum fuiſſe confiteor, mulierem in regno quod ſuperiorem neſcit ut in dominio alio ex lege naturæ non poſſe ſuccedere parentibus ſuis. Quod ſi ego inevitabiliter edocere valeam, et avitum michi debetur regnum, ac Mater et Patruus in hac concertatione ſuccumbent, dummodo neuter eorum improbare valeat me Avo predicto poſſe in Regno ſuccedere, etiam in vita matris meæ.

Cap. XVIII.

Hic oſtendit qualiter mulier creata eſt, ut ſemper ſubdatur viro.

SCRIBITUR Genes. primo C°. quod facturus Deus hominem dixit, "Faciamus hominem ad ymaginem et ſimilitudinem noſtram et preſit piſcibus maris, et volatilibus cœli et beſtiis terræ, univerſæque creaturæ omnique reptili quod movetur in terra." Et ſecundo C°. "Sic formavit igitur Dominus Deus hominem de limo terræ et

inſpiravit in faciem ejus ſpiraculum vitæ, et factus eſt homo in animam viventem." Ex quibus perfecte erudimur quod eodem inſtanti quo factus eſt homo primus, ipſe etiam factus eſt ymago Dei et præſidens orbis, feminâ nondum plaſmatâ; quæ in ſuperiori Tractatu lucidius explanantur. Deinde poſtquam formata eſt mulier, ſubjecit Dominus terram tam viro quam mulieri, et dedit eis dominium in communi ſuper omnia animantia ejus, dicens, "Creſcite et multiplicamini et replete terram et ſubjicite eam, et dominamini piſcibus maris et volatilibus cœli et univerſis animantibuſque quæ moventur ſuper terram;" non auferens a viro per verba hæc prelatiam qua ipſum ſolum antea inſignivit. Nam licet ambo, vir ſcilicet et mulier, per verba hæc dominium in communi receperint ſuper omnia animantia terræ, congruum ad hoc et bonum fuerat ſolum eorum unum mundi habere prælatiam; quia, ut ait Philoſophus in primo Politicorum, homo, qui animal politicum eſt et ſociale, non poteſt bene in ſocietate vivere ſine aliquo præſidente et regente. Sic et cives civitatis cujuſque licet in ſocietate vivant, unus tamen eorum ſemper preeſt cui et ceteri cives obſequuntur. Hanc primi hominis prelatiam, Sanctus Thomas in Prima Secundæ Queſtione iiij^xx^ xvj. Articulo quarto, ſimiliter et in tertio libro De Reg. Princ., vocat dominium naturale, quod ſuper mulierem conſiſtebat in conſulendo et dirigendo. Ex quibus ſequitur, quod duplex tunc habuit vir dominium, unum in communi cum femina ſuper omnia animantia terræ, aliud ipſe ſolus habuit, videlicet ſuppremum, quod et *prelatiam* nos vocamus, ſuper feminam et cuncta animantia illa; prout videmus ſæpius civitates habere dominia in communi, ſed rector civitatis nedum dominiis illis ſed et omnibus civibus civitatis illius prælatus eſt. Magiſter vero Sententiarum ſuper Epiſtolam Pauli primam ad Corinthios xi^a^. C°. ſic dicit, "Nulli dubium hominem eſſe factum ad ymaginem Dei, non ſecundum corpus neque ſecundum quamlibet animæ partem, ſed ſecundum rationalem mentem, ubi poteſt eſſe agnitio Dei, quæ ſit in ſuperiore parte rationis, et non eſt ymago Dei niſi quod inheret incommutabili veritati, et hæc mens propter carnis conjunctionem qua ipſa et caro ſunt unus homo, dicitur homo ad ymaginem Dei factus." Ex quibus verbis intelligere recte valemus quod homo primus, qui mens erat rationalis quem præfecit Dominus univerſæ creaturæ, etiam proprio corpori ipſe erat prelatus; quo et nobis qui tunc in ipſo ratione ſeminali; necnon et mulieri, quæ potentialiter in eo tunc fuerat, ipſe primus homo fuerat originaliter tunc prefectus. Quod et nos jam ſentimus, dum in eo et per eum tunc peccavimus, ſenſit et mulier quæ ſerpenti ait, "De fructu ligni quod eſt in medio Paradiſi præcepit nobis Deus ne commederemus;" non enim tempore precepti illius mulier plaſmata fuit, tamen in hiis verbis ipſa recognovit ſe tempore ejuſdem precepti fuiſſe in Adam cui ſoli preceptum illud fuerat promulgatum. Quare ipſa ſicut et omnia Adæ corporis membra, licet alio modo, Adæ tunc erat dicioni obnoxia. Nam licet Dominus omnia de nichilo creavit, non eſt tamen nihil factum aliquid, ſed illud quod antea fuerat in potentia creativa et obedientiali, de potenciali eſſentia in actualem exiſtentiam divina creatione eſt productum. De quali productione loquitur Philoſophus xj°. Metaph. ubi tractat de generatione quæ fit ex ente in potentia. Mulier vero quæ entitate potenciali

predicta in Adæ costa latebat, ex costa illa, quæ entitate reali os et caro Adæ tunc existebat, in muliebrem substanciam formata est. Quo costa illa non est in nichilum comminuta, sed realem quam prius habuit essentiam, licet alio modo, adhuc retinebat. Sicut Adam ipse terræ de qua plasmatus est substantiam factus homo non amisit, quo de eo postquam peccaverat, ait Dominus, "cinis es et in cinerem reverteris." Quod et recognovit ipse Adam qui de Eva concito ut ipsa formata est, ait, "Hoc nunc os de ossibus meis et caro de carne mea," ostendens per hæc verba, quod dum ipsa jam plasmata idem et non aliud licet aliter os similiter et caro fuerat quæ in eo antea extiterant, eodem subjectionis vinculo quo in corpore Adæ humiliabatur etiam inde ablata aliter quamvis subjecta remansit. Quare et ait, "Hæc vocabitur virago," quod nomen mulier illa ab eo passive ut subdita recepit, sicut et cetera mundi animantia nomina sua receperunt, ut a prelato suo. Nam non nisi majores et parentes leguntur antiquitus nomina imposuisse hominibus. Unde solus Deus primo homini, qui majorem non habebat, nomen imposuit et eum vocavit Adam. (Genis. v. C°.) Nec minimam humiliationis materiam mulieri hoc nomen *virago* ministrat, ut diligenter consideranti lucide apparebit. Nec grandi ministerio vocare potest, quod mulier in adjutorium viri facta est; nam qui in alterius adjutorium constituitur, ad ejus bonum et comodum faciendum ordinatur, quod proprium est officii famulantis, quo adjutorium a servitio parum differre sapiens intuetur. Et si propter virum facta sit mulier, cum, ut dicunt logici, unumquodque propter quid est aliud majus, majoritatis gratia vir preponebatur mulieri, quo ordinis ratione ipsa ei substituebatur et obedientiam debuit ut preposito suo, juxta Apostoli preceptum dicentis "Obedite prepositis vestris." Et si ad quale hominis adjutorium mulier creata est consideretur, non minimum conferet huic certamini sublevamen. Nam licet in adjutorium consolationis et vitandæ solitudinis eam fuisse plasmatam Creatoris verba demonstrent, dicentis, "Non est bonum hominem esse solum;" etiam in adjutorium procreationis generis humani, cujus cura ad primum hominem ut ad Dei ymaginem pertinebat, mulierem fuisse factam Hugo de Sancto Victore in sexto libro De Sacramentis, etiam alii Doctores Catholici quam plurimi conscripserunt. Non enim vir ideo Dei ymago est, quia in anima ejus potissimam Dei ymaginem, tres illas potentias memoriam videlicet sive mentem, intellectum, et voluntatem ille gerit, in quibus quasi in speculo Summæ Trinitatis ymaginem ipse poterit intueri. Nam has potencias ut vir gerit mulier in anima sua, gerit et Angelus, quorum neuter Dei ymago est, nec ad ejus ymaginem factus. Nam de muliere scribitur in Canone, Causa xxxij^a. Questione v. C°. *Hæc Imago:* "Sic mulier non est facta ad ymaginem Dei:" et post pauca, "Mulier velat caput, qui non est ymago Dei." Similiter et de ambobus, videlicet muliere et Angelo, Vincencius in Speculo Historiali, libro secundo, sic scribit, "Mulier licet predita ratione sicut vir dicitur tamen esse gloria viri, non autem ymago Dei eadem ratione, qua nec Angelus." Sed virum nedum ad Dei ymaginem conditum, sed et Dei esse ymaginem. Apostolus primò scribens ad Corinthios xj. C°. testatur, dicens, "Vir quidem non debet velare caput, quoniam ymago et gloria est Dei;" quod nusquam legimus fuisse scriptum de

aliqua alia creatura. Sed ſi quare vir et non mulier Dei ſit ymago conſideremus, mulierem viro ſemper fuiſſe et eſſe debere ſubjectam, necnon ipſam ſuper virum dominium ſuppremum habere non poſſe, quo nec regnare in regno de quo jam noſtra fit queſtio, manifeſtiſſime tunc patebit.

Cap. XIX.

Hic oſtendit quid ſit hominem eſſe factum ad ymaginem Dei.

PREDICTUS Hugo in libro predicto, ſic dicit: "Creavit autem Deus primum hominem unum, ut unum eſſet generis humani principium: quatenus in hoc diaboli ſuperbia confunderetur, et humanæ naturæ humilitas divinæ ymaginis ſimilitudine glorificaretur:" et poſt pauca, "Ut in hoc etiam Dei ymago appareret in homine, quod, ſicut Deus omnibus rebus creationis principium extitit, ita homo omnibus hominibus principium eſſet generationis, et omnes homines dum ſe ab uno et unum eſſe cognoſcerent, omnes ſeſe quaſi unum amarent. Poſtea vero in adjutorium generationis de ipſo viro facta eſt mulier; quum ſi aliunde fieret, unum profecto omnium hominum principium non eſſet." Hæc ille. Et in predicto Canone ſic ſcribitur: "Hæc ymago Dei eſt in homine facta, ut unus ſit factus, ex quo omnes ceteri oriantur, habens imperium Dei quaſi Vicarius ejus, quia unius Dei habet ymaginem." Ex quibus ſcripturis duas eſſe cauſas quare vir et non mulier Dei ſit ymago apprehendimus; unam videlicet quod ſicut ab uno Deo omnes creantur creaturæ, ſic ab uno viro omnium hominum procederet generatio; alteram videlicet quia ſicut Deus omnes regit quas condidit creaturas, ſic et vir omnes ab eo homines regeret genera os, ſimiliter et mundum ut Vicarius Dei. Et hæc de muliere dici non poterunt, cum de nulla mulierum omnes homines nati ſint. Nam Adam aut Evam femina non peperit. Nec mulieri ulli regendi orbem dedit Dominus poteſtatem, cum non ſit ipſa ymago Dei. Gignere vero et concipere poteſt mulier ſed nulla tenus procreare. Nam procreare compoſita dictio eſt de *pro* et *creo;* quaſi creationis loco viro tributa poteſtas, quo ipſe in hoc Dei gerit ymaginem, et licet mulier in hominis conceptione, ſicut terra in primi hominis creatione, materiam miniſtret, in qua et de qua vir generat prolem quem illa concipit, ipſa tamen prolem illam non procreat, ſicut terra primum hominem non creavit. Quo in hoc vir omnis et non mulier ulla Dei gerit ymaginem. Nam, ut dicit Philoſophus, ſemen viri eſt ad ſemen mulieris in generatione ut manus figuli ad ollam, manus quoque carpentarii ad materiam ligneam; prout iſta, alia etiam premiſſorum, ipſe in libris De Animalibus, et potiſſime in xv^o. li. eorumdem clariſſime demonſtrat. Neque minus hiis ſimilari poſſe cenſetur coagulantis forma actiſ in caſium dum transformat. Philoſophus etiam vij^o. Metaph. dicit, quod ſperma viri facit ad generationem ſicut ars ad artificialia. Et cum mundum regere et homines procreare ſit ymaginem Dei eſſe, mulier, quæ non eſt Dei ymago nec ad ejus ymaginem facta, non poteſt mundum regere,

ficut nec ipſa poteſt homines procreare, cum ſint hæc opera ſolum ymaginis Dei, et, per conſequens, regnum de quo jam fit queſtio quod ſuperiorem neſcit ipſa non poteſt poſſidere. Tamen, ut hæc clarius emineant, libet ea ſuccincte in ſummam quandam congerere, ut quid ex prætractatis reſultet lucidius videamus.

Cap. XX.

Epilogatio eorum quæ in duobus proximis Capitulis dicta ſunt.

PRIMO oſtendimus qualiter, antequam crearetur genus humanum, mulierem debere ſubdi viro Divinâ providentiâ predeſtinatum eſt, dum ſcribitur quod dixerat Deus "Faciamus hominem et preſit univerſæ creaturæ." Nam nedum ſenſibilibus et plantis tunc creatis præfuit homo concito ut ipſe creatus eſt, ſed et eorum fetibus et germinibus nondum productis, cum et quotiens deinde in realem actualemque eſſentiam ipſa prodirent, primus homo ille tunc jus habuit preeſſendi, ſic et mulieri nondum plaſmatæ, quæ plaſmari tunc potuit ex oſſibus ejus, in ipſa potenciali et obedientiali mulieris eſſentia nondum in realem et actualem eſſentiam productæ, ſicut et nobis, tunc in ſeminali tamen eſſentia quieſcentibus, ipſum primum hominem prefuiſſe ſuperius eſt probatum. Et cum dicat Sanctus Auguſtinus in libro lxxxiij Quæſtionum quòd aliâ ydeâ conditus eſt homo, aliâ leo; ſi conſimiliter ydeâ aliâ vir, aliâ mulier conditi ſint, recte dici poterit quòd antequam viri et mulieris plaſmatio angelis nota eſt, mulieris viro futura ſubjectio ydealiter exemplariterque Divino lucebat in Verbo, in quo omnia quæ facta ſunt tunc viva erant. (Johan. primo C°.) Quo omni originis modo initiatus maturatuſque eſt muliebris ſexus, ut foret ſexui virili ſubjectus; deinde ſexus ille in realem actualemque eſſenciam progreſſus actualiter ſubjectionem illam paſſus eſt, quod et apertiſſime panditur, dum in adjutorium viri mulier prima facta nomen ſubjectionem ſuam denotans obedienter a viro ſuſcepit, quam obedientiam ſemper eſſe obſervandam firmiſſimo nexu Dominus conſtrinxit, dum virum et non mulierem ad Ejus ymaginem, quod eſt orbem regere et homines procreare, Ipſe plaſmavit; quo ſolum virum Sibi conſtituit vicarium in terris, qui, ut Deus, nedum mulierem et mundum regeret ſed et homines ipſe procrearet. Hæc jam ex præoſtenſis quaſi in acervum quandam congeſſimus, non ut te Judicum ſapientiſſimam, quæ nichil ignoras, erudiamus, ſed ut ea genetrici meæ, quæ, ut ſuperius ſuſpicati ſumus, non juris ut facti caſus noſtri veritatem novit, lucide innoteſcant; quo ipſa ratione contenta citius deſiſtat ab hac lite. Et cum preeſſe et ſubeſſe ſimpliciter dicta ſint oppoſita, et oppoſitorum idem ſit judicium, videlicet quod uno eorum conceſſo alterum denegetur, dum ſubeſſe viro mulierem natura conſtringit, eam ſimpliciter, ideſt omni modo, viro preeſſe, quod eſt ſuppreme preeſſe, ipſa natura ſimpliciter prohibet. Simpliciter enim dico, quod nullo addito dico; hæc namque regula eſt logicorum. Et cum

regnare in regno quod petitur ſit ſimpliciter preeſſe viro, mulieri regnare in regno tali a jure naturæ ſimpliciter eſt prohibitum. Quare cum ſcire ſit rem per cauſam cognoſcere, non poteſt a modo mater mea iſta ignorare, nec mulierem regni quod ſuperiorem neſcit arbitrari capacem, cum ipſa jam ſuper hoc tot et tam fecundis cauſis clariſſime ſit imbuta.

Cap. XXI.

Mulier naturaliter ſubeſt Viro.

PREMISSA non de remote profluentibus naturæ rivis, qui rapacitate curſus ſe obſcenis aliquibus immiſcuerunt, exhauſta ſunt, ſed in ipſius manantis naturæ humanæ fonte geſtata, in cujus fundo Sacræ Scripturæ radiis per medium aquarum viventum inde ſalientum conſpeximus qualiter humana natura effluxit primitus a Divinâ, quæ eam condens in ſexus duos geminavit, virilem ſcilicet et muliebrem; virilem ſcilicet preeſſe ſtatuens, quo et muliebri ſubeſſe indidit, quâ ſarcinâ ſexum illum perenniter oneravit; quo et hoc cenſetur legem eſſe naturæ muliebris; ex qua tunc fonte hauſimus, quòd feminam preciſe preeſſe viro, quod eſt viro preeſſe et non ſubeſſe, innaturale eſt et ſubverſio ordinis quo naturans natura genus ordinavit humanum. Quare cum dicat Apoſtolus ad Romanos x ij. C°. "Quæ autem ſunt a Deo ordinata ſunt," quo ſequitur, quòd omnia quæ ordinata non ſunt a Deo non eſſe perhibentur, dum mulierem preciſe preeſſe viro contra naturæ regulas eſſe ſit probatum, eam ſic preeſſe non a Deo eſſe eſt etiam comprobatum. Et cum dicat Dominus "Omnis plantatio quam non plantavit Pater meus eradicabitur," Divina eſt tunc ſententia, quo et tua, Judicum ſanctiſſima, eſſe debet, quod, ſi mulier in regnum quod ſuperius neſcit ſe intrudat, quod preeſſe eſt et non ſubeſſe viro, ipſa inde expellanda eſt, ex quo et ſequitur quod ipſa regnum tale nullo jure poterit obtinere. Et ſi de facto regnum hujuſcemodi ipſa poſſideat, nedum inde propellanda eſt; ſed dum illud ſic poſſidet naturæ ſuæ ipſa ordinem deſerit, quod omnino eſt peccare, cum non aliud ſit peccatum quam deordinatio naturæ, ſive deſertio ordinis univerſi.

Cap. XXII.

Exempla quæ ſolum facta narrant probare non poſſunt Mulieres debere regnare.

SED ne quid te, Judicum doctiſſima, ſolicitet Genitrix mea magnalium quæ fecere mulieres exemplis, cum non prodigiorum, ſicut nec naturaliter contingentium, te latent cauſæ! Tu namque ſcis quod Debbora, quam ipſa commemorat, mulier ſancta et profetiſſa fuit, quæ ſanctæ converſationis meritis proprio viro et omnibus filiis Iſrael prudentiâ prepollebat. Sic et caſtiſſima Judith diſtrictiſſimâ vitæ ſeveritate uſa omnibus

Bethuliam habitantibus conſilii miniſterio prelucebat; quo ipſa Divino meruit conſilio Olofernis tiranni caput auferre, per quod et Aſſiriorum exercitum ipſa diſcipavit; non tamen ejus exemplum mulieres, quæ naturâ timidæ ſunt et imbecilles, concitat ad pugnandum. Sic nec Debbora facta, quæ in ſuperexcellenti gratiâ operata ſunt, arguunt mulieres ut Debbora judices debere conſtitui. Daniel puer juvenis judices ſenes æquiſſime judicavit, non tamen hoc exemplum prebet ut juvenes conſtituantur in ſolio tribunali. Aſinus Balaham locutus eſt, nec hoc loquendi exemplum prebet aſinis aliorum. Quare nobis jam de naturæ curſu ejuſque judicio contendentibus nihil conferunt Divina miracula aut prodigia quæ fecit Dominus præter aut ſupra vires naturæ, qui ut vult poteſt et alias quam jam creatas condere creaturas. Et quid Meſſagetarum Reginæ, quæ Cirum premit, victoria nobis propoſita eſt? Nonne Cirus ille erat de quo prophetavit Iſayas quod Dominus ante eum iret et gentes diſperderet ac verteret dorſa regum, aliaque magnalia per eum faceret et portenta? cujus et nomen, ipſo nondum nato, Propheta promulgavit, ac eum vocavit Chriſtum Dominum; quæ et ſi de eo completa fuerint, ipſe tamen ea non Dei virtuti, ſed propriæ potentiæ attribuit. Et nonne tunc ipſe meruit experiri, ut nec feminam ipſe ſine Dei adjutorio poterat ſuperaſſe, quo femina illa Tomyris Meſſagetarum regina Cirum illum qui tot virorum ſtragem antea fecerat, jam Dei præſidio elationis merito deſtitutum, magno licet vallatum exercitu, trucidavit, et vicia ejus exprobans, caput ipſius in utre vitreo ſanguine repleto recondidit, et circum vas illud taliter ſcribi fecit, "Sanguinem ſitiſti, ſanguinem bibe"? De Semirame muliere ſceleratiſſima ſimiliter exemplum profert mater mea. Nonne Semiramis illa Nini qui ſecundus regnavit in Aſia uxor fuit? et poſt ejus mortem ſibi ipſi uſurpavit imperium ejus, et, ut tutius regnare poſſet, proprio filio nuptiali fœdere ſe conjunxit. De qua Sanctus Auguſtinus xviij°. libro De Civitate Dei ſic ſcribit: "Semiramis uxor Nini a proprio filio Nino interfecta eſt, eo quod auſa eſt mater filium inceſtare concubitu," ipſa enim licet in regno illo ſe intruſit nullo tamen titulo illud poſſidebat, nec poſſunt facta tam ſceleſtæ mulieris nos concitare ut ejus actus imitemur, ne ſicut inceſtus ejus nobis incontinentiæ genus peſſimum demonſtrat, ſic et ejus ambitio ad elationis ſpeciem nequiſſimam nos invitet. Et Amazonum regnum quod ſolum in orbe legitur feminis regulatum minime te, Judex optime, commovere poterit; proverbialiter namque dicitur quod hyrundo una ver veniſſe non probat; et Philoſophus dicit quod turpis eſt pars quæ non convenit ſuo toto; congruenſius vero foret ut Amazones ſe ceteris mundi regionibus conformarent, quam ut omnia mundi regna ſe redderent regulis Amazonum. Neque quidem femineum regimen, quod ſolum ſuper mulieres extollitur, obſtare poterit diſputatis, cum non niſi ſuper viros tractata reprobent impe ia mulierum. Amazonum quoque nomen et genus, ut dicit Diodorus Siculus in tertio libro De Priſcis Hiſtoriis, eſt jam extinctum, cujus ultima virtute precipua Penthesilea regina fuit, quæ in bello Trojano ab Achille interfecta eſt; qualis abolitio minime accidiſſet, ut putatur, ſi earum ſtatus fuiſſet ad decorum univerſi. Sed quid nobis de judicio rationis diſputantibus conferunt hæc facta et eventus qui contigerunt? Ratio eſt quæ facta corrigit; ſed facta nun-

quam mutant rationem; facta enim quid actum eſt oſtendere poterunt, ſed quid faciendum, ſolum ratio eſt quæ nos informat. Igitur ſi recta ſint quæ perſuaſimus, non poſſunt ea rectis preteritis improbari.

Cap. XXIII.

Solum Mulieres ſubjectæ Viris Viros regere poſſunt.

Est preterea, cum dicat Mater mea quod filiæ Ducum quorumdam Marchionum et Comitum, qui ut Reges regunt ſubditos ſuos, ſuccedunt parentibus ſuis in eorum dignitatibus et dominiis, et quod inter eorum titulos et jus matris meæ differentia minime reperitur, non ſecernit recte illa inter hujuſmodi titulos et cauſam quam ventilamus. Non ulli unquam indubium venit quin mulieres nobiles dominia magna poſſidentes, aliæque feminæ ſæpe viros regant. Sic mater filium, matrona domum, et induſtrioſa conjux regit familiam viri ſui. Nam mulieres viris ſubjectas viros regere poſſe non prohibet lex naturæ, nec noſtra diſputatio contradicit, quæ ſolum de ſuppremo regimine decernet. In adjutorium namque viri mulier facta eſt; et cum vir poſt Deum ſit preſidens orbis terræ, mulieri in adjutorium ejus factæ convenit in officio ſuo ſibi patrocinium quomodo libet adhibere. Vir enim regit quos per alios ipſe gubernat; quare et omnes homines quos mulieres regere videntur etiam et viri quibus mulieres illæ ſubduntur regunt, ut cunctas creaturas quibus prelatus eſt homo etiam regit Deus. Quare et Auctor De Cauſis dicit quod quidquid poteſt cauſa ſecunda poteſt cauſa prima nobiliori et altiori modo. Unde mulierem facturus Dominus in adjutorium viri, "faciamus," inquit, "ei adjutorium ſimile ſui;" et non dicit, ſimile Noſtri. Sed vir in adjutorium Dei factus, videlicet ut regeret orbem tanquam vicarius Ejus, creatus eſt ad ſimilitudinem Dei: mulier vero, in adjutorium viri facta, non Deo ſed viro dicitur facta ſimilis, quia non Deo, qui ſuppremè omnia regit, ipſa ſimilis eſt ut vir, cum ſumma ipſa regere nequeat; ſed viro, qui ſub Deo omnia regit, ipſa, quæ ſub viro etiam omnia regere poteſt, facta eſt ſimilima. Quare Genes. V. C. ſcribitur ſic; "Hic eſt liber generationis Adam; in die quâ creavit Deus hominem, ad ſimilitudinem Dei fecit illum, maſculum et feminam creavit eos." Ambos dicit eſſe creatos, ſed ſolum virum creatum dicit ad ſimilitudinem Dei. Sic et ejuſdem libri primo C°. ſcribitur, "Creavit Deus hominem ad ymaginem et ſimilitudinem Suam, ad ymaginem Dei creavit illum, maſculum et feminam creavit eos;" et non dicit ambos ad ſimilitudinem Dei, ſicut nec ad ymaginem Ejus fuiſſe creatos. Quare ſub viris mulieres poſſe regere viros natura non vetat; quo Ducibus, Marchionibus et Comitibus, qui a ſuperioribus dominis regulantur, mulieres ſuccedere, aut dominia rura ſuorum homines regere ipſa natura non prohibet. Leges tamen Civiles eas in dominiis talium ſuccedere non concedunt, nec Apoſtolus permittit eas dominari in viros. (i°. ad Tymoth. ij°. C°.) Sed iſta jam omittimus, quia ea in ſuccedentibus clarius oſtendimus. Nequa iſta quæ jam conceſſi-

mus dictis magni avunculi mei refragantur, quibus ipse superius asserui, mulieres ad curam tantum domesticam naturaliter esse dispositas; quia licet et forincecam curam ipsæ sub viris gerere possint, non tamen ad eam ut ad domesticam feminæ perfectæ sunt, quo eam propriis virtutibus peragere sufficiant. Nam a bellorum acie timiditate, a policiæ cura tenuitate intellectus, a culturæ labore teneritate complexionis, et a mercanciæ commercio inadvertentiâ quâdam mulieres retrahuntur; sicque a quacumque administratione, præter quam a rei familiaris cura, ipsæ naturali quodam defectu prepediuntur. Unde ea non nisi sub virorum cura eorumque directione mulieres administrare permittuntur. Quare et virorum dicioni eas natura subjecit, quo viris obtemperantes etiam viros ipsæ regere possunt, quia earum tunc regimina non feminarum sed potius virorum sentiuntur. Quare non probant exempla quæ de filiabus Ducum et aliorum dominorum posuit mater mea, (quæ tamen leges quædam non admittunt,) quòd, licet filiæ illæ sub viris viros regere possint, ipsæ regnum regere valeant quod superiori non obedit.

REPLICACIO FRATRIS REGIS AD ALLEGATA NEPTIS SUÆ.

Cap. XXIV.

Infirmitates Mulierum naturales non eas expellunt a Regimine, sed causam cur repelluntur ostendunt.

ET, silente tunc Nepote Regis, Frater continuo sic exorsus est. Non, ut concipit Filia Regis, ego imperfectiones infirmitates que quas patiuntur mulieres assignam causas esse quæ eas repellunt a summi regiminis cura, sed defectus naturalium bonorum, quibus mulieres ab viris minorantur, ostendere posse asserui causam quæ eas suppreme regnare non permittat; Divinam namque voluntatem eas sic creantem esse causam illam dubitare non sinimur. Sed voluntatem hanc directe conspicere naturali contuitu non valemus, cum sit ipsa supra posse humani intellectus, quo eam non nisi ab effectu operationis suæ naturali scrutinio agnoscere licet. Sed modo tali eam intelligere nos possumus Apostolus docet, dicens, "Invisibilia Dei per ea quæ facta sunt a creatura mundi intellecta conspiciuntur," quia tali indagatione creaturæ omnes Deum confitentur et Ejus loquuntur voluntatem, sicut fidelis hominis verba loquuntur voluntatem ejus. Similiter et Philosophus dicit quòd ab effectu pervenitur ad agnicionem causæ; quo, cum in causis non sit progressus in infinitum, ipse Philosophus naturali discursu rationis pervenit ad cognicionem Causæ Primæ, quæ est Deus: ex quo et sequitur quod non nisi insipiens dicere poterit in corde suo, Non est Deus. Quare

dum ego muliebrem ſexum a ſexu viri oſtendi potenciis, viribus ceteris, quæ naturalibus bonis minoratum, Divinam etiam voluntatem oſtendi quâ uterque ſexus conditus eſt, et ab effectu operationis Ejus detexi eam eſſe cauſam cur mulier in regno quod ſuperius neſcit regnare non poterit, dum minora majoribus ſupereſſe, aut minus perfectum ſimpliciter perfectum regere conſonantiſſimus univerſi ordo minime patiatur. Sicque ex Dei veſtigiis excerpſi quod Nepos Regis hauſit ex fonte naturæ humanæ. Ille illa in collibus venatus eſt, ſed ego eadem in vallibus deprehendi. Sic etenim Sapientia clamitat in plateis, dicens: "Si quis diligit ſapientiam, ad me declinet et eam inveniet." Ut non ſit creatura tam exigua quæ non dicat Deum eſſe Conditorem ſuum, et quæ ſuis qualitatibus, formâ, et virtutibus non loquatur cauſam cur eam ſic condidit ſapientia Creatoris. Sed quia iſta, ſimiliter et ea quæ Nepos predictus ſuperius peroravit, non niſi racionibus panduntur humanis, in quibus clam repens error poterit latitare, mulierem in regno de quo contendimus regnare non poſſe Divinâ etiam ſententiâ, quæ omnem refugit errorem, docere conabor.

Cap. XXV.

Mulierem ſuppreme regnare non poſſe Divinâ ſententiâ indicatur.

LEGITUR in Genes. quòd, poſtquam parens prima, verſuti ſerpentis callidi tate ſeducta, de fructu ligni de quo homo edere prohibitus eſt veſcebatur, et inde dederat viro de quo etiam iſpe comedit, parens ipſa inde a Domino judicialiter oblocuta, facinus ſuum recognoſcens, ait, "Serpens decepit me et comedi:" deinde poſtquam Dominus ſerpentem pro ſcelere ſuo triplici animadverſione dampnaverat, etiam mulierem pro culpâ ſuâ duplici pœnâ diffinitivâ ſententiâ punivit ſub hiis verbis, "Multiplicabo erumpnas tuas et conceptus tuos, in dolore paries filios tuos." (Ecce una!) "et ſub viri poteſtate eris et ipſe dominabitur tui." (Ecce altera!) demum et virum, qui etiam mandatum Ejus ſpreverat, laboris et ſudoris miſeriâ Dominus tunc afflixit, uti liber ille manifeſtius hoc declarat. Non autem ſententiæ hæ Divinæ ſolum individua illa quibus prolata ſunt earum ſeveritate ligarunt, ſed et genera, ſpecies, et ſexus, ſimiliter et ſingulos fetus ex eiſdem progreſſura, perpetuo vinculo innodarunt. Quo ſicut nec viri proles ſine labore deinceps edit panem ſuum, aut femina ulla a viro fœta erumpnas et dolorem partûs evaſit, ſeu viperæ cujuſque genimen pacem invenit cum ſemine mulieris, ſic nec mulier uſpiam ex tunc a collo ſuo excutere potuit jugum poteſtatis viri et dominii ejus. Et ſicut parentem primam gravavit jugum illud, ſic et idem humiliavit et ſemper humiliat univerſas filias ejus, ut non fuerit aut erit in futurum mulier aliqua quam non ligavit aut ligabit ſanctio hæc Divina. Et ſicut ſententia hæc precepit mulierem quamlibet eſſe ſub poteſtate et dominio viri, ita et mulierem non eſſe ſub viri dominio et poteſtate eadem ſententia interdicit: nam precepto uno contrariorum eorum alterum prohiberi neceſſe eſt. Sed mulierem regnare in regno quod ſuperius neſcit, eſt eam

non esse sub potestate aut dominio viri, quod predictæ sententiæ contrariatur. Ergo eam sic regnare diffinitivâ Dei sententiâ prohibetur. Hæc nuda sunt et clara, nec sophistico ullo obumbrata velamine. Quid tunc restat comprobandum, ut mulier a regno tali repellatur? Ipsam namque inde jure naturæ superius probatur esse repulsam, et jam eam inde precludi debere etiam Divinâ sententiâ indicatur. Argumentis igitur super hiis amplioribus non egemus. Sed cum in superiori Tractatu concluſum sit litem hanc Naturæ solis legibus posse finiri, cur jam per ejus discutionem legem etiam ego superaddidi Divinam, convenit ut ostendam. Nam si in hoc examine sufficiat Lex Naturæ, frustra ad alterius legis præsidium convolatur; maxime cum tam latens error occultari non poterit quem non deprehendet lex perfecta; et si perfecta non fuerit lex naturæ, cur ipsam hanc litem sopire posse sit concluſum difficile est reddere rationem. Expediet igitur ut me in istis manifestius quodammodo jam declarem.

Cap. XXVI.

Quare jam investiganda est sententia Legis Divinæ.

LICET Juris Naturæ sententia tanti sit vigoris ut non alterius humani juris munimine egeat in terrenis, tamen cum lex illa non nisi racionis discursu poterit agnosci, (quo si premissa tractans a recto rationis tramite deviaverit, non hæc quæ panduntur juris naturæ sententiæ dici poterunt sed Tractantis,) non inutile jam fore videtur ut in hac lite etiam legis Divinæ, quæ firmitate fidei radicata mobili rationis discursu agitari nequit, sententiam visitemus. Ipsa namque celsior est majorisque auctoritatis quam lex humana, et per eam omnis humana censura mensuratur, et si justa fuerit approbatur, et si iniqua justissime condempnatur. Quare si lex ipsa Divina in supra disputatis sanxcierit ut sentire videtur lex naturæ, incunctanter se sciet Filia Regis omni jure esse a regno paterno precluſam. Et forsan in hoc scrutinio reperiet se gravioris culpæ objectu Divinâ quam humanâ lege repulsam. Nam licet soli viro sententia illa laboris et sudoris videatur esse prolata, muliebrem sexum inde fuisse immunem esset sentire prophanum. Nam sicut in Adam peccavit omne semen ejus sexus utriusque, sic et de pœna sibi injuncta participant omnes ejus fœtus, ut in sustinendo pœnam ejus non distinguatur masculus a femella. Quo de sola Eva relinquitur questio, an pœna in Adam sancita etiam in eam redundavit, cum ipsa alias pœnas luerit late ab Adæ pœna distinctas et quæ virilem sexum nequivit molestare; et non potuit Adam eam, quæ, ut ipse, liberum habuit arbitrium, sine propria culpa ream feciſſe delicti, quo nec eam ipse potuit sui reatus implicasse vindictâ; tamen, quia scimus Evam, quæ de fructu edit, interdicto gravius multo deliquisse quam prolem aliquam Adæ quæ non nisi in parente peccavit et tamen Adæ pœnâ cruciatur, et dum ambos parentes primos similis culpa maculavit, quo simul a Paradiso propulsi sunt, exules facti in hac miseriæ

Sententia lata in Virum etiam Mulierem involvit.

valle, ubi eorum neutri licuit ſine laboris ſudore adquirere panem ſuum, ac, cum fuerint ipſi caro una, major ex hoc cura Adæ incumbebat ne ipſa inediâ tabeſceret; quare ipſa, quæ in adjutorium ejus facta eſt et ejus ſubdita dicioni, pati non potuit eum ſolum pro eorum communi victu fatigari, ſuſpicari non ſinimur Evam a pœnâ Adæ injunctâ fuiſſe liberam aut ſeclusam. Generi namque humano loquebatur Dominus omnia quæ Adæ locutus eſt, ſic et quæ Evæ dixerat non ſoli individuo illi, ſed muliebri dixerat ſpeciei et ſexui, ut quæ ſerpenti non tantum ejus germini, ſed et omni generi ejus. Divinus vero in hiis erat ſermo et non humanus, non enim ſemper noſtro more loquitur Dominus; Ipſe namque Adam et Evam uno nomine Adam appellavit (Genes v. C°.), ſic et nomine Adam univerſum genus humanum ſexus utriuſque in hac ſententia inclusive alloquutus eſt; ſic et cum Adæ dixerat, "Cinis es et in cinerem reverteris," etiam Evam corruptione illâ involvit. Nec mirum, cum et Noe, humano ſermone ſimul et prophetico maledicens Chanaan, etiam patri ejus non expreſſo, qui plus filio deliquit, ipſe male dixit. Quare mulier nulla, ut nec vir ullus, ſine ſudore commedit panem ſuum, panis namque nomine omnis neceſſitas humanæ ſuſtentationis deſignatur. Et dum ultra pœnam hanc quæ utrique ſexui indifferens eſt et communis mulier pœnas alias ingentes et graves ſuſtinet ex hoc decreto, eam nequius quam vir peccaſſe Divina figura judicii manifeſte demonſtrat. Nam cum omnis judex ſecundum culpæ menſuram commenſuret pœnam delinquentis, dum mulier in Divino examine graviori quam vir pœnâ multatur, facinus ejus gravius fuiſſe quam viri non potuit dubitari, et hunc facinoris mulieris exceſſum non in hoc ſolo fuiſſe, quòd ipſa nedum peccavit ut vir ſed et illum concitavit ad peccandum, ſed magis in eo fuiſſe, quòd ipſa, relictâ obedientiâ quam viro debuit, eum docere præſumpſit, judicii forma et pœnarum congruentia manifeſte declarant. Et licet Dei judicia ſint abiſſus a nobis inſcrutabilis, quotiens tamen judiciorum ejus forma cauſam eorum lex nobis revelat, inertii vicium foret cauſam illam mente non digerere et rimari; delectabile namque mentibus piorum eſt Divinæ juſticiæ ſacramenta penſare. Et quid convenientius punire potuit mulierem quæ pro ſuâ complacentiâ virum ad mortem concitavit, quàm ut ipſa virum quem ad vitam parere gliſcit pareat cum dolore? Et quid congruentius contempnentis ſubditi arrogantiam compeſcere, quam reluctantem cum ſubdere dominio ejus quem contempſit vinculo firmiori? Non enim decuit Judicem tantum virum, qui mulieris inſultu occubuit, dominatus honore pro ſua vecordia privaviſſe, ſed, dum inferior obedientiam priſtinam deſeruit, rationi congruit ſuperioris poteſtatem ſuper contumacem arcius quam antea aggravare, etiam ſi ſuperior ille reus fuerit criminis nequioris. Hiis igitur penſatis, mulieris pœnam in partu ex impulſu primi parentis ad peccandum fuiſſe cauſatam, et quòd ipſa viro ſubdita eſt ut domino, cui antea tantùm ut ſocio fuerat ſubjecta, pro ejus inobedientia eveniſſe, forma ſententiæ Divinæ manifeſte declarat. Quid tunc, hiis recte conſideratis, clarius oſtendere poterit pretractata eſſe ab omni erroris velamine aliena, aut mulierem ante peccatum jure naturæ viro fuiſſe ſubjectam, quam nunc oſtendit hæc ſententia Creatoris, quæ eam pro ſubjectionis naturalis contemptu taliter condempnavit.

Pœna originalis peccati gravius fævit in Mulierem quam in Virum.

Cap. XXVII.

Quomodo Jus Divinum approbat Legis Naturæ ſententiam.

NONNE jam opportunè in hoc certamine Legi Naturæ additur Jus Divinum? Illa mulierem proprio arbitrio viro ſubdi reliquit: ſed dum mulier hoc facere renuit, iſtud, ejus arbitrium refrenans, eam viro ſubdi compulit arbitrio alieno. Illa mulierem libere viro obedire ſanxit: ſed dum mulier libertate illâ abuſa eſt, iſtud, libertatem ejus minuens, eam viri dominio ſubjugavit. Illa mulierem per virum conſuli ac dirigi precepit: ſed dum mulier hoc parvipendens virum docere preſumpſit, iſtud virum ſeveriorem quam antea fuerat extunc ejus conſtituit pedagogum. Illa ſe ſepius occultat ſub nebulis humanæ rationis, ſed iſtud, ejus veritatem detegens, eam purgat ab omni contagione erroris. Nunquid tunc convenienter utiliterque in noſtræ diſputationis ſubſidium adducitur jus Divinum, dum omnia quæ Nepos Regis ſimiliter et ego legis naturæ regulis perſuaſimus, iſtud jam ſub cenſuræ forma et effectu approbat et confirmat, necnon omnem erroris ſuſpicionem a noſtræ diſputationis proceſſu eliminat, ac contravenientes omnes cum cenſurâ perſequitur et affligit; ſic que liquet quod omnia quæ nos diximus legem naturæ ſtatuiſſe, eadem perpetuo obſervari jam jubet lex Divina ſub vinculo fortiori. Mulierem namque viro ſubdi afferuimus jus humanum ſtatuiſſe; ſed ne jugum illud mulier abjiciat unquam, dominum ejus virum conſtituit jus Divinum; ut ſi recuſet ultro facere quod ſanxit natura, poteſtate hoc facere compellatur quam tribuit lex Divina. Dominus mulieris factus eſt vir, ne eam pudeat ipſum venerari, et potenciâ prædituſ eſt, quâ, ſi ipſa reluctetur, eam ſibi compellere poterit obedire. Sicque mercede perpetuâ conduxit Dominus virum, videlicet poteſtatis ſtipendio et dominatus honore, ut mulierem propediat ne ipſa amplius tranſgrediatur legis naturæ precepta. Et quid amplius ex hoc Divino judicio reſultat in ſubſidium hujus diſputationis adhuc profundiùs proſcrutari conabor.

Cap. XXVIII.

Fortius Mulierem repellit a Regno Jus Divinum quam humanum.

QUIDQUID jubet lex naturæ, ſi idem princeps per edictum etiam fieri mandaverit, mox edictum illud arciùs ſubditos ejus ligat quam antea fecerat lex naturæ; quo ſi quis deinceps illud edictum fuerit tranſgreſſus, nedum ſecundùm legis naturæ cenſuram punietur, ſed pro contemptu mandati principis pœnam luet graviorem. Quare licet ex lege naturæ occidere non licuit, poſtquam tamen per edictum tabulis conſcriptum Dominus homicidium prohibuit, occidere multo majoris reatus fuit quam antea fuerat, et delinquentem penæ ſubjecit graviori. Quo Cayn, qui tempore quando ſub lege naturæ mundus totus regebatur fratricidium commiſerat, interimi non jubetur, ſed vagus et profugus ire permiſſus eſt;

tamen poſtquam in Monte Synay homicidium eſt prohibitum, omnis homicida interfici jubetur, ut in Deuteron. libro expreſſius edocemur. Plus etiam ligant vincula duo quam unum; ſed et funiculus triplex, ut dicit Sapiens, difficile rumpitur; quare cum principis auctoritas diffinitivâ ſententiâ aliquem judicaverit pro ſuo crimine puniendum, ſententiæ illius ſeveritas fortius deinde ligat delinquentem quam antea fecerat principis edictum ſeu lex naturæ. Unde licet de ligno vetito edentem Divinum mandatum reum judicaverat mortis æternæ, paſſio Chriſti Electos inde eripuit; ſed pœnam quam pro eadem culpa Dominus ſententiâ ſuâ diffinitivâ homini inflixit, nec paſſio illa aut quævis alia ſatisfactio hucuſque mitigavit. Quæ unquam ab homine fœta ſine dolore enixa eſt? Aut vir quis unquam ſine labore veſcebatur pane? Vere nec ſerpentis ſemen pacem hucuſque invenit cum ſemine mulieris. Igitur ſi illud quod lex naturæ de ſexu muliebri diffinivit etiam jufſerit Divinum edictum, nedum in hoc majori firmitate legis naturæ ſententia vallaretur, ſed et mulier illam tranſgrediens plecteretur cenſurâ graviori. Quare dum diffinitivâ Domini ſententiâ prohibitum eſt hoc idem quod prohibuit lex naturæ, ſub pœna graviori, ſolidum manet hoc et firmum, ut non poſſit modo aliquo enervari, maximæ in partis leſionem. Nonne tunc in hoc ſcrutinio jam invenimus quod invenire fuimus ſuſpicati, videlicet quod mulier a regno de quo contendimus ſub majoris culpæ periculo, lege Divinâ repellitur quam humanâ? Verum etiam ipſa inde multo fortius et firmius predicto Divino judicio quam antea elongatur. Nam cum principis preceptum ſpernere jubens legis naturæ ſententiam ſervari majoris ſit reatus quam ſimplicem naturæ ſententiam preterire, multo majoris culpæ eſſe dinoſcitur judicium principis diffinitive prelatum contempnere, cum et illud fortiùs ligare probetur quam ſimplex ligat edictum. Et dum judicialiter ſanxerit Dominus mulierem ſemper eſſe debere ſub poteſtate viri, quod eſt non regnare in tali regno, regnum predictum ambire iniquum peccatum fecit jus Divinum, quum antea fecerat lex naturæ, et mulierem ab ingreſſu ejus fortius firmius que repellit. Non igitur ego legem jam allegans Divinam a legis naturæ auctoritate in hoc certamine videor reſilire, ſed eam magis quam antea perſequi, dum ſententiam approbo auctoritate legis celſioris. Quare Filiam Regis amplius regnum paternum poſtulare prohibe, Judicum rectiſſima, dum ejus introitum tu noſcis tot obicibus et repagulis obſtipatum ut impoſſibilis ei in illud a modo ſit ingreſſus.

Cap. XXIX.

Sola Lege Naturæ perfecte ſolvi poteſt Queſtio propoſita.

UNUM ad hoc reſtat neceſſario explanandum, ne hujus Tractatus emulis obloquendo materiam detegere videamur. In ſuperiori Tractatu diximus queſtionem noſtram ſolâ Lege Naturæ poſſe abſolvi. Et nunc ego Divinum judicium ipſam diſcutere poſſe certius ac fortius aſſerui, quam poterat lex naturæ. Ut quid tunc tam ſedulo

pro ſolucione ejus legis naturæ rimavimus decretum, et pro inveſtigatione naturæ et virium legis illius tantum tempus conſumpſimus ſimiliter et laborem, dum jus aliud jam ego reperi lege illâ preſtancius et efficacius ad ſolutionem ejuſdem queſtionis. Scrupuloſum vero valde eſt iſtud ac delectabile mentibus invidorum, tamen illud in priori Tractatu ſufficienter eſt digeſtum, et ejus caligo clariſſime ſerenata, dum ibidem declaravimus qualiter, licet lex Divina ad omnia ambigua diſſolvenda ſufficiat, leges tamen humanæ neceſſariæ ſunt ad lites hominum finiendas. Ut nocti neceſſarius eſt lunæ ſplendor, quem ipſa non effundit niſi ex virtute jubaris ſolaris, et ſicut quamvis ſol ſufficiat ad totum mundum luminandum, et tamen lumen ſuum nobis non diſtribuit præterquam per medium lunæ: ſic et Lex Divina, quæ veritatis ſol exiſtit, noſtræ ignorantiæ tenebras in caſu propoſito proportionabiliter non illuminat, niſi per Legis Naturæ medium et doctrinam. Et quamvis nos, dum legis naturæ ſententiam cunctarum legum auctoritatibus in noſtro caſu pretulimus, eam etiam legis Divinæ ſententiæ forte a ſimplicibus pretuliſſe dicemur, non tamen nos ita feciſſe ſentiri poterit a circumſpectis, cum temporalis legis fieri nequiat comparatio ad eternam; ipſa enim infinitate ſuâ omnem humani ſenſus ſuperevolat menſuram. Quo nec Canon ille eam incluſiſſe videtur, qui generaliter ait, quòd jus naturale inter omnia jura primatum obtinet tempore et dignitate (v^a. Di. C°. j°.), in quibus verbis jus Divinum Canon ipſe expreſſe non excluſit, et tamen in ſententia ſua generali jus illud non involvit. Nec jus naturæ tantùm eſt humanum, ſed et illud eſt jus Divinum, ut in predicto Tractatu altero apertius edocetur. Sic quoque et illud ſimpliciter nominat Iſidorus in primo libro Ethimologiarum, quod et ponitur in Canone primo, Diſtinctione *Omnes*. Nec quamvis terrena jus illud regat, quo ſæpiſſime jus humanum nominatur, deſinet per hoc jus eſſe Divinum; ſicut nec luna, nocti lumen adminiſtrans ut inſtrumentum ſolis, corpus deſinet eſſe celeſte. Similiter et judicium quod jam per me profertur, licet perpetuum ſit et lex Divina nominari mereatur, non eſt tamen illùd lex eterna, quia a tempore ipſa ſumpſit exordium. Similiter et poſtquam lex naturæ queſtionis noſtræ veritatem perfecte detegerat, ipſa fuerat primitus promulgata; quo ſimpliciter dici non poterit quòd lege illâ, licet Divina dicatur, queſtio noſtra ſoluta eſt aut poterat abſolvi, cum finiri non valeat quod ſemel eſt finitum, ſicut nec interfici ſemel interfectus. Quare judicium illud in primos parentes latum cauſam noſtram preciſe non finit; ſed eam legis naturæ ſententia tunc fuiſſe finitam certiſſime probavit, quam ſententiam et illud confirmavit ſimiliter et confirmat. Tamen ne iſta caligine aliquâ obumbrari videantur, ea apercius quodammodo referare conabor. Non enim quia preallegato Dei judicio mulier ſubdi viro juſſa eſt ipſa viro primùs ſubdita reperitur, ſed quia, ante judicium illud redditum, ipſa juris naturæ decreto viro obedire precipiebatur; quod decretum ipſa, virum dirigere preſumens, tranſgreſſa eſt. Judicium iſtud ex Divino conſilio ſuadente juſticiâ tunc proceſſit, quo ipſa criminis ſui culpam luit et certius quam antea ſe novit eſſe ſubjectam. Sic quoque non hujus judicii vigore queſtionis noſtræ dubium primitus aut radicitus ſolvebatur; ſed quia illud ex legis naturæ ſententia primitus declaratum eſt, judicium iſtud poſtea a Domino eſt prolatum, quo legis naturæ ſen-

tentia fortius quam antea roboratur. Unde ſolo legis naturæ decreto queſtio noſtra ſolvi diroſcitur, et non predicti judicii cenſurâ. Nam non quod confirmat, ſed quod confirmatur cenſetur eſſe efficiens cauſa. Sic etenim et ea quæ preceptis moralibus prohibentur non ideo peccata ſunt, quaſi ſic prohibita et alias peccata non forent; ſed quia antea ex lege naturæ eadem reperta ſunt peccata, etiam Divino edicto ipſa erant prohibita, quo et peccata illa facta ſunt multo quam antea graviora; et ea committencium aggravati ſunt reatus, et tanto majores effecti quanto peccata illa nedum contra Dei mandata, ſed et contra legis naturæ committuntur ſanccionem. Unde et peccata quæ tantum contra precepta ceremonialia fiebant, maxime reſpectu ejuſdem objecti, minoris erant culpæ quam ea quæ contra moralia erant commiſſa.

Cap. XXX.

Judicium Divinum non finit Mulierem ſuppreme regnare de jure: ſed Lex Naturæ eam ſic regnare non permittit de jure aut de facto.

PRETEREA predictum judicium in primos parentes latum et lex naturæ non ejuſdem efficaciæ ſunt aut vigoris ad queſtionem noſtram ſolvendam, neque in deciſione ejus eundem aut ſimilem operantur effectum. Nam lex naturæ, cuam Divinæ Providentiæ diximus radium, mulierem a ſuppremo regimine in radice humani generis, ubi ipſa genus illud in ſexus duos diſtincxit, naturaliter propellebat. Quo mulier incapax redditur regionis quæ jam petitur; ita ut ſi eam de facto mulier invadat, occupet, vel uſurpet, non per hoc ipſa ejus domina efficitur vel regina, ſicut nec maritus efficitur qui alterius ducit uxorem; uniri namque arte non poterit quod omnino natura ſejungit, ut ſuperius poſitum docet exemplum de lapidibus et lignis quæ nec glutino aut cemento recipiunt unionem. Quare et quamvis mulieres in regnis ſummis verſari valeant etiam et debacchari, ipſas tamen regno hujuſmodi inveſtiri prohibet lex naturæ. De quali faciendi modo loquitur Boetius ex ſententia Platonis in quarto libro Conſolationis, dum ſic dicit, "Liquet veram eſſe illam Platonis ſententiam dicentis ſolos quod deſiderant facere poſſe ſapientes, improbos vero exercere quod libeat, quod vero deſiderant explere non poſſe." Unionem namque talem qualem cum regno petito contrahere optat filia regis non eſſe de ratione entis, quo nec de natura rerum, cum ſit contra naturam plaſmationis, lex naturæ in initio conditionis humanæ indicavit, ut patet profunde conſideranti. Quo unio talis, ſicut de jure fieri non poterit, ita nec de facto. Sed longe alius eſt effectus quem in cauſæ hujus deciſione judicium predictum operatur et multum ab hoc effectu diverſus. Nam regnum quod petitur et mulieris regimen judicium illud in radice non ſeparat, ſed ſegregata ſeveritate quâdam penali temperdiſtare compellit, quo et unionem predictam de jure fieri judicium iſtud non finit, ſed quum de facto unio talis fieri poſſit hoc judicium non diffinit. Quare non invanum, ut diſſimare ſimulantur emuli, nos tanto ſudore rimavimus legis naturæ ſecreta, vires, et naturam. Ipſa namque ſola

eſt quæ celatam quam querimus complete et perfecte denudare ſufficit veritatem, et eam radicitus declarare; judicium vero predictum, licet veritatem illam quodammodo pandat, eam complete non revelat; ex parte pandit, ſed non perfecte; ex tempore eam patefecit, ſed non ſemper; per obliquum probat, ſed non directe; oſtenſam novit, ſed eam primitus non invenit. Sed hæc lex naturæ, ut predicitur, longe aliter operatur, dum ipſa conſummate, ſimpliciter, et perfecte, propria virtute et non aliena, directe et non oblique, originaliterque in facto et in jure eam pandit et revelat, qualiter agere nequit judicium predictum quod pro accidente peccati latum eſt. Hanc igitur legem ſolam recte diximus noſtram poſſe diſcutere queſtionem, et huic legi optime ſuperadditur predicta lex Divina quæ ejus decreta confirmat et obſervari precepit firmius quam poterat ipſa lex humana, ac magnitudine auctoritatis ſuæ a legis humanæ judicio omne dubium effugare poterit et ſuſpicionem erroris. Certiſſimum igitur eſt, firmiſſimum quoque eſſe dinoſcitur, quod Divino et humano jure tam uniformiter eſt concluſum. Quare et tu, Judicum optima, judica quod judicant nedum lex humana ſed et Dominus Deus tuus.

REPLICACIO FRATRIS AD ULTIMA ALLEGATA NEPOTIS.

Cap. XXXI.

Frater Regis primo reprobat ſimilitudines Nepotis.

SUFFICIENTER hiis quæ replicavit Filia regis jam ſatisfactum eſſe puto. Quare me hiis quæ ſuaſit Filius ejus, quibus ſe poſſe potiri regno quod querimus exiſtimet, tempus poſtulat ut opponam. Verſute multum Filius ille jam declaravit titulum ſuum, dum ſe dixerit per medium matris, ſed non ut heredem ejus, poſtulare regnum Avi ſui, quo declinare ſe poſſe putat regulæ quam ipſe approbavit cenſuram, quæ neminem poſſe plus juris transferre in alium docet quam ſibi competere dinoſcatur. Non eſt vero regula illa ita Civilis ut legis naturæ doctrina; quare calliditate aliqua non poterit etiam verſipellis quiſpiam ejus effugere veritatem. Et nonne dum aſſimilat nepos matrem cordulæ qua trabes ab alto in edificium dimittitur, et ſono quo verbum tranſit in auditum, ſimiliter et contractui quo venditæ rei proprietas in ementem transfertur, ipſe etiam matrem probare conatur transferre poſſe in nepotem regnum avi ſui, licet regno hujuſmodi ipſa non poterit inveſtiri. Sed longe aliter probat ſimilitudinum illarum effectus; nam transferri in alium non poterit quod in transferente nulla tenus conquierit. Unde in cordula ſemel pependit trabes quam ipſa depoſuit in ſtructuram; in voce recluſum eſt verbum quod tranſivit in auditum; ſimiliter et contractus vacuus non fuit juris quod ipſe tranſtulit in ementem. Sed femina cui competere

nunquam potuit jus regnandi, ut nepos predictus ſimiliter et ego ſuperius comprobavimus, jus tale in nepotem transferre non poterit, cum plus juris ipſa in alium transferre nequiat quam ſibi competere dinoſcatur. In ipſa namque, ut in cordula trabes, jus hujuſmodi non pependit; nec ut vox in ſonitu jus illud in ea extitit involutum; neque ut contractus jus contrahencium mater complexa eſt jus regnandi. Nam contractus a vendente proprietatem aufert et ponit in ementem. Sed mulier via eſſe non poterit qua jus tale poterit in alium tranſmeare, quia juri tali in via ipſa eſt et non via. Nec glutino, ut fingit nepos, aſſimilari poterit ſanguinis propinquitas quam mater a patre contrahit et transfert in filium, dum glutinum aſſeres jungens cum utroque ut medium ſemper manet; quod cum avo et nepote mater facere non poterit, dum regnum tale ipſa contingere nequiat quod filio ſic uniret. Sed papæ! vehementer admiror quod ſcrupuloſum iſtud quo jam nepos regis quaſi in domo dedali intricatur Legum conditores videntur providiſſe; dum non regula legis ſupradicta ſola contenti fuerunt, ſed et aliam quaſi eam explanantem Juris Regulis inſeruerunt, quæ talis eſt, "Nemo plus comodi herædi ſuo relinquit quam quod ipſe habuit" (ff. de. Reg. Juris). Quid tunc ſophiſticam hanc caliginem clarius detegere poterit opinionemque nepotis conterere quam jam facit hæc norma legis? Ipſa namque non ſolum ut altera in alium transferre comodum cohibet non habentem, ſed et expreſſe denegat eum poſſe comodum ſuo heredi relinquere. Hæc igitur regula ferme a contradicentium mentibus omne aufert heſitacionis velamen. Nam juris regula non eſt nova legis edicio, ſed juris quod prius fuit brevis enarracio. Unde eodem Tit°. l. j^a. ſic ſcribitur, "Regula eſt quæ rem quæ eſt breviter enarrat, non ut ex regula jus ſumatur, ſed ex jure quod eſt regula fiat." Quare non prelatam jam regulam hominis ſentire debemus eſſe ſanctionem, ſed legis quæ tunc erat, videlicet naturæ legis, elucidacionem nos ejus decreti reddentem certiores. Quare ſuper his, dum jam nuda ſunt et clara, amplius diſceptare non libet.

Cap. XXXII.

Caſus quem poſuit Nepos non eſt ſimilis titulo ſuo.

ET quid Nepoti confert in hoc certamine quod ipſe veriſſime tamen memoratur, videlicet, ſi non ex filia ſed ex filio ipſe nepos fuiſſet regis, et pater ſuus in avi vita ab humanis deceſſiſſet, ipſe tamen nepos eidem avo naturæ jure ſucceſſiſſet, medio patris ſui qui regnum illud alteri dandi vel concedendi nunquam habuit poteſtatem? Veriſſimum vero eſt iſtud, ſed caſui quem diſputamus diſſimile, quo nepoti in hoc conflictu minime ſuffragatur. Filius namque regni quod petitur capax eſt, et in vita patris jus quoddam latens habuit in eodem. Nam, ut dicunt Leges Civiles, filii vivente patre domini quodammodo exiſtimantur, (Inſtitut. De Herædum qualitate et differentiâ. § *Sui autem.*) Similiter et Apoſtolus eos *dominos* vocat dum dicit "Quanto tempore heres parvulus eſt nichil differt a ſervo cum

ſit dominus omnium." Nec Patriarcha Jacob in vita patris primogeniti jus fratris ſui comparaſſet, ſi tunc frater ejus jus aliquod non habuiſſet in hereditate paterna. Vere nec prodigus ille Evangelicus patri ſuo dixiſſet, "Da michi porcionem ſubſtanciæ quæ me contingit," ſi nichil juris in bonis paternis ei tunc contigiſſet. In regno etiam Angliæ filius *ad oſtium eccleſiæ* in vita patris ſui de patrimonio ejus dotare poteſt uxorem ſuam, dummodo patris ad hoc aſſit aſſenſus; ſed ſic facere nequit filius ille de patrimonio alieno, licet ille alius aſſenſum ſibi præbeat eam ſic dotandi. Et ſi talliatum fundum nepos aliquis in Curia Regis ibidem poſtulet, licet pater ejus obierit in vita avi ſui, petens ipſe jus fundi illius patri ſuo ab avo deſcendiſſe narrabit; quia in filium jus hereditatis latenter in vita patris ſurrepit, quod ſibi poſt mortem ejus attrahit hereditatem ejus totam. Sed jus tale ad Filiam in regno quod petitur deſcendere non poterit, cum ipſa hujuſmodi regni incapax ſit et inde excluſa jure Divino et humano; quo in ipſa regnum tale nullo titulo poterit inveſtiri. Quare per feminam regnum hujuſmodi deſcendere non poterit in nepotem, dum regnum tale ad filiam, etiam ſi ipſa patrem ſuum ſuper vixiſſit, minime potuit deſcendiſſe. Sicque eliditur titulus omnis quem ratione ſimilitudinem predictarum ſibi vendicat Nepos predictus, nam ſimilitudines illæ ad caſum noſtrum combinatæ non ſimilitudines ſed ſophiſmata nominari merentur.

Cap. XXXIII.

Qualiter kereditandi jus primitus emanavit.

SED quia de deſcenſus et ſucceſſionis jure nobis jam concertatio eſt, utile videtur ut quale ſit jus illud nedum a legis naturæ regulis ſed ex Divinis Scripturis perſcrutemur, ut ſi ab avo hereditas deſcendere poterit immediate ad nepotem, inde clarius intelligere valeamus. Et ni fallor, ante hominis lapſum lex naturæ jus illud nullatenus homini revelavit. Parentibus namque primis, dum ipſi innocentiam ſervabant, jus deſcenſus poſſeſſionum non innotuit, cum ipſi tunc omnia poſſidebant in communi, quo proprietatem quæ deſcendere poſſet penitus ignorabant; ſed ipſis deinde innocentiam deſerentibus, mox humano generi a Domino dictum eſt, "In ſudore vultus tui veſceris pane tuo," in quibus verbis conceſſa eſt homini proprietas in rebus quas ipſe proprio ſudore poſſet nanciſci, ut in priori Tractatu plenius edocetur. Nam cum ſuus eſſet panis quem in ſudore perquireret homo, et non ſine ſudore proprii vultus poſſet quiſquam edere panem, omnis homo non ſudans prohibitus eſt veſci pane quem alius proprio ſudore queſierit. Quo proprietas lucrati panis ſoli ſudanti accrevit, et omni homini alii ſublata eſt inde communio. Sicque proprietas rerum quæ deſcendere valeat primitus erupit. Panis enim nomine non ſolum quod manducatur et bibitur ſed omne quo ſuſtentatur homo, et ſudoris vocabulo omnem hominis induſtriam nos intelligere debere majores noſtri docuerunt. Et quia proprietas ſic queſita in recompenſacionem ſudoris quo attenuatum eſt corpus querentis ſuccedit,

legis naturæ ratio eam univit ejus conqueſtori, ut amiſſæ integritatis ſuæ dampnum lucrata proprietas compenſaret: ſicque deperditæ integritatis humanæ loco ſuccedit proprietas et quaſi accidens ſudanti coheret, quo et ſanguinem ejus ipſa deinceps comitatur. Non eſt tamen proprietas homini accidens naturale, ſed legis naturæ regulis homini accidit, et ad inſtar naturalis accidentis homini eſt conjuncta, non juris naturæ nexibus prout natura primitus fuerat inſtituta, ſed ut ipſa exigentibus hominis meritis extat libertate et viribus ſuis priſtinis deſtituta. Unde deſcendente filio a proprietario tali, etiam jus quoddam patrimonii ſui ſic adquiſiti eidem filio, ut paternæ ſanguinis porcioni quo et participi ſudoris ejus, latenter in vita patris deſcendit. Et ſicut flos ante fructum erumpens non eſt fructus ſed preſagium fructus ſucceſſuri, ſic jus illud in vita patris filio deſcendens non eſt proprietas patrimonii patris, ſed deſcenſuræ proprietatis indicium, quo moriente patre patrimonium ejus totum, jus illud ut fructus florem ſequens, realiter deſcendens in filium ſe infundit. Sed in vita patris qui facto proprio illud ſibi adquiſivit ſine ejus facto proprio ab eo non evelletur, nec in filium ſucceſſionis jure poterit transfundi. Sic terra quam emit Abraham ad Iſaac filium ſuum et de Iſaac ad Jacob filium ejus, ut ſupra dicitur, deſcendit. Civitatem quoque quam edificavit fratricida Cayn filii ejus, licet ſceleratiſſimi, juris naturæ regulis poſſiderunt. Quare deſcenſus et ſucceſſionis juris fontem jam invenimus, de quo et hauſimus qualiter proprietas quæ deſcendere poterit primitus ebullivit, qualiter et ipſa ſe homini conjunxit, demum quoque qualiter ipſa ab homine in hominem deſcendens ſucceſſionis jure in heredem ſe transfundit. Sed tamen non iſta ad omnem proprietatem referri debent, ſed ſolum ad immobilium prædialium quoque proprietatem, quæ perpetua ſunt ut hominis eſt natura. Mobilia vero et perſonalia, quæ permanentia non ſunt, licet adipiſcantur ſudore, non ſemper ad heredes, ſed ſæpe ad executores, fidei commiſſarios, legatarios ordinarioſque, et quandoque ad uxores et liberos inter eos dividenda ſecundum locorum conſuetudines diverſas tranſiunt diverſimode diſtributa.

Cap. XXXIV.

Hic oſtendit quid ſit deſcenſus et qualis eſt progreſſus ejus.

TAM ut jus deſcendendi quod in fonte ſuo guſtavimus nobis totaliter ſe oſtendat, neceſſarium fore videtur ut jus illud in ſui profluxus rivo, quo majus pateat, etiam viſitemus. Pro cujus profectu conſiderare primitus libet, ſcalam quandam eſſe a terra in cœlum erectam, cujus gradus ſunt omnium rerum et factorum cauſæ, et cujus latera ſunt Juſtitia et Veritas, inter quæ gradus illi locantur et firmiſſime ſolidantur. In hac ſcala gradiuntur omnia quæ ductu legis naturæ ſurſum aſcendunt deorſum ve deſcendunt. Per eam philoſophi creaturis infimis uſque ad Cauſam Primam, quæ eſt Deus, aſcenderunt, et per eam deſcenderunt omnes filii Adam uſque ad infantem jam in cunabulis vagientem. Per eam aſcendit Evangeliſta Lucas, licet lumine ſupernaturali ductus, a Chriſto uſque Adam qui fuit

Dei. Etiam conſimiliter deſcendit Matheus ab Abraham uſque ad Joſeph virum Mariæ, de qua natus eſt Chriſtus. Hæc ſcala naturæ via eſt regia, a qua ſi quis ſurſum deorſum ve itinerans deviaverit a legis naturæ orbitis, ipſe tunc delirat et in precipicium vadit, ambulans in invia et non in via. Hanc vidit patriarcha et propheta Jacob ſtantem ſuper terram et ait, "Vere Dominus eſt in loco iſto, non eſt hîc aliud niſi domus Dei et porta cœli;" de qua ſic ſcribitur, "Vidit Jacob in ſompnis ſcalam ſtantem ſuper terram et cacumen ejus tangens cœlum, et Angelos quoque Dei aſcendentes et deſcendentes per eam, et Dominum innixum ſcalæ." (Genis. xxviij°.) Profecto ſi ſpiritus cœleſtes per ſcalam hanc aſcendant et deſcendant, neceſſarium fore videtur ut per eam terrena quæque aſcendentia et deſcendentia gradiantur, dum ea ſuæ ſarcinæ mole gravata potius quam ſpiritus cœleſtes gradibus indigeant, maxime quotiens ad Deum, qui eſt innixus ſcalæ, ipſa properant et aſcendunt, quod et perficere nequiunt niſi gratiâ tracta. Et ſicut aſcendere eſt ſurſum ſcandere, ſic et deſcendere de ſurſum ire eſſe non ambigitur, quo et deſcenſum deſcribere poſſimus deſurſum eſſe greſſum in gradibus cauſarum. Quare ſi quid in hac ſcala gradatim non deſcendat ſed præceps ad yma labatur, non deſcenſus eſt lapſus ejus, ſed eſt caſus et ruina, quæ mortem minantur et non deſignant vitam. Caſus namque legis naturæ ductum deſerit, quo ad corruptionem tendit et properat in non eſſe; ſicut et omne quod legis naturæ declinat conductum. Natura etiam nichil agit ſubito, ſed gradatim ſenſimque et ſucceſſive, quia ſolus Deus eſt, ut dicit Sanctus Auguſtinus, qui agere poteſt ſubito et in inſtanti. Quare regnum de quo contendimus ſi legis naturæ ductu ab avo deſcenderet in nepotem, gradatim ad eum oportet ut deſcendat in hac ſcala, cum ſic deſcendere ſtatuerit natura omnia quæ deſcendunt, quo gradus nullus ſcalæ predictæ omitti poterit aut præteriri, quin per eam gradiatur; nam aliter acceleratio ad inferiora caſus fieret et non deſcenſus, neque legis naturæ conductus, quæ omnia ſenſim dirigit per continuatas cauſas, quæ ſunt greſſus ejus. Et cum caſus omnis ſit defectus, dum deficit a naturæ ductu, etiam caſus omnis vicium eſt et peccatum, quod ordinis naturæ eſt tranſgreſſus.

Cap. XXXV.

Qui ſunt deſcencionis gradus Frater Regis hic oſtendit.

SED cum cauſas rerum et factorum gradus eſſe per quos aſcenditur et deſcenditur in ſcala naturæ ſit relatum, quæ ſunt cauſæ illæ jam convenit indagare, ut quis ſit gradus primus, quis ſecundus, et quis remotior in hereditatis deſcenſu pariter agnoſcamus. Non enim cauſæ materiales aut formales gradus efficiunt, quibus aſcendi vel deſcendi poterit; ſed materiam ſubſtanciamque ipſæ miniſtrant in quibus gradus hujuſmodi ſolidantur et diſtinguntur. Solum igitur efficientes et finales cauſæ gradus conſtituunt per quos ſurſum deorſumve tranſitur. Leonardus Aretinus in Yſogogico Moralis Diſciplinæ dicit, quòd tot ſunt fines quot ſunt actus, et finem appellat omne id cujus gratiâ aliquid agitur.

Quare ſi quis domum fabricet, domus illa finis eſt actûs ejus, quo fabricans eſt cauſa efficiens et domus cauſa eſt finalis. Conſimiliter quoque fit in omnibus actibus quos quis poterit cogitare. Sola tamen intencio hominis ſibi duos conſtituit fines, propinquum ſcilicet et remotum. Ut fabricare vult quis domum ut maneat in ea; ecce finis primus! Manere vult in domo ut aeris et inimicorum vitet incomoda: ecce finis remotus intentionis ejus! qui c finis erat primus in ipſius intellectu. Sic et bonus vult eſſe omnis juſtus et iniquus, quc bonitas eſt finis primus omnis intentionis humanæ; ad quem tamen finem ſunt actus nonnulli medii qui proprios habent fines de qualibus jam differimus. Sed bonus vult eſſe quilibet ut poſſit eſſe beatus, et hic eſt finis ultimus omnis intentionis hominum. Ad primum attingitur operatione virtutum, ſed ad ſecundum, cum ſupernaturalis ſit adeptio ejus, in hac ſcala non aſcenditur niſi aſcendens gratiâ trahatur. Igitur artifex fabricatâ domo finivit actum ſuun, ſed qui eum fabricare conduxit quouſque in domo illa manſerit ſuum non complevit intentum. Sed dum non de intentionis progreſſu ſed ſolùm de actuum et rerum gradibus jam ſit nobis cura, ad aſcenſionis et deſcencionis in gradibus illis naturam redeamus, quare et ſic procedimus. Cauſæ efficientes et finales in actibus hominum ita continue conjunguntur, ut non ſit medium aliquod inter eas. Nam ſicut fabricans cauſat domum, ſic et domus non dum facta eum cauſavit fabricare. Quo cauſæ illæ ita cathenantur et junguntur ut una ab alia nullo diſtet medio. Quare a cauſante cauſa in cauſatam continue progredi poterit omne quod deſcendit nullo medio prepeditum; quæ cauſæ, efficiens, videlicet, et finalis, nedum gradus conſtituunt ſed et ſunt gradus illi quibus aſcenditur et deſcenditur in ſcala ſupradicta, quarum efficiens cauſa eſt gradus prior et finalis cauſa gradus eſt ſecundus. Quæ finalis etiam eſt efficiens cauſa tunc ſubſequentis cauſæ, ſimiliter et ſequentis gradûs, et ipſe gradus ſubſequens eſt efficiens cauſa proximi gradûs tunc ſequentis; ut pater eſt efficiens cauſa filii, et ipſe finalis eſt cauſa actûs generationis ejus; ipſe quoque filius efficiens eſt cauſa prolis ſuæ, et proles illa finalis cauſa eſt actûs generationis ejus; qui et nepos eſt prædicti primi generantis, et gradum obtinet tercium in ſcala naturæ; in qua dum peditentim ſenſimque et ſucceſſive conducit natura omne quod deſcendit, ſicut ſemen avi in filium ut in gradum ab eo proximum, et a filio in nepotem ut in gradum ſibi proximum, et nullatenus immediate ab avo deſcendit in nepotem; ſic hereditas avi, quam lex naturæ ſibi velut accidens quoddam copulavit, quo eum et ſanguinem ejus ipſa ſemper comitatur, ab avo immediate non deſcendit in nepotem, ſed ab avo primitus deſcendit in filium, a quo deinde in nepotem, quia gradum aliquem preterire aut tranſilire nequit aliquid quod deſcendit, dum ſucceſſive, ut predicitur, ſemper agit natura. Hoc namque ordine vir fortis ſenſim declinat in ſenium, et infans creſcit in robuſtum. Hoc paſſu omne quod vegitat creſcit et marceſcit. Sic eſtas in yemem labitur, et yemps vergit in eſtatem. Sic cœlum terræ girum circuit, et quem curſu tali fugarit diem curſu conſimili revehit. Non ſol qui jam in Cancro fulget in Capricornum ſubito ruet, nec Leonem tranſiliens ſaliet in Virginem, quouſque ſucceſſivo curſu ſuo menſem celebraverit in Leone; tali namque curſu continuo natura regit orbem. Quo hereditatis deſcenſus hujuſ-

modi progreſſus legem minime poterit declinare. Igitur dum regnum de quo certamus hoc proceſſu deſcendere nequit ab avo in nepotem, maxime dum viret parens ejus, et avi filiam illud contingere prohibet natura, quo ab illa in filium illud deſcendere non poterit, ſequitur quòd, dum avus exitum alium non habeat, regnicolæ regionis ſuæ ad eligendum novum regem procedere debeant, qualiter policiæ regulis facere ſolent ſubditi, quotiens eorum rex ſine herede aliquo moriatur.

Cap. XXXVI.

Nichil eſt quod non dependet a Prima Cauſa per continuatas Cauſas.

PRETEREA omne quod eſt cauſam habet eſſenciæ ſuæ, et cauſa illa cauſan aliam habuit, quæ et tertiam habuit cauſam quâ ipſa in eſſe prodiit, ſic quoque a tertia illa per cauſas alias continue aſcenditur uſque ad Primam Cauſam, quæ eſt Deus; quo non eſt aliquid quod non ad Deum per continuatas cauſas referatur. Quare et cauſæ illæ cathenæ quædam ſunt quibus creaturæ ſingulæ ſuo colligantur Creatori, et ab Eo dependent et ſervantur in eſſe, dicente Philoſopho (XI. Metha^ce), "A primo principio dependet cœlum et tota natura." Hæ cauſæ regulæ ſunt et metæ per quas ratio diſcurrens veritatem revelat in dubiis; hæ judicia formant hominum et detegunt errores; hæ malum vitare docent eos et adherere bono, ac poſt fidem rectiſſimæ ſunt normulæ quæ docent omnem bonum; per has pendent nedum res conditæ, ſed et omnes recti actus. Hiis cathenis probroſum non nectitur, nec in eis contextum eſt iniquum. Juſtiſſima ſunt omnia quæ hæc vincula ligant; nec a Deo eſt aliquid quod non pendeat hiis cathenis. Hæ ſunt cathenæ aureæ de qualibus locutus eſt Homerus, ſimiliter et Macrobius ſuper Sompnium Scipionis, qui ſic ſcribit, "Invenietur propiùs intuenti, a ſummo Deo ad ultimam rerum fecem, una mutuis vinculis ſe religans et nuſquam interrupta connexio." Et hæc eſt Homeri cathena aurea quam pendere de celo in terras Deum juſſiſſe commemorat. Tali cathenâ a Deo pependit rex de cujus regno agimus, ſimiliter et regnum ac reliqua poſſeſſio ejus tota. A rege iſto deſcendit Filia quæ jam petit, cui et deſcendit omnis hereditas regis illius, ſolo regno ejus excepto; et a filia iſta deſcendit Nepos qui etiam modo queritur, cui et poſt obitum matris deſcendit omnis hereditas ejus, conſimiliter quoque a nepote illo fiet deſcenſus in ejus generationem per rectiſſimas cauſas continuatas, et a Prima Cauſa ſucceſſive emanantes. Sed ſicut in cathena materiali, ſi hamus unus vel junctura dematur, tota pars inferior cathenæ illius quæ deorſum a dempto hamo vel junctura pedebat mox in terram ruit, disjuncta a reliqua parte cathenæ quæ perſeverat illeſa, ſic quoque et in cathena metaphorica quam oſtendimus, dum lex naturæ hamum unum vel juncturam, videlicet filiam regis quæ ei proxime compaginata erat, diſſolvit, judicans eam regni ejus non eſſe capacem, totum reſiduum cathenæ illius quod deorſum ab ea pendebat, videlicet nepos predictus et propago ejus tota, cecidit, ab illeſa

remanente parte cathenæ illius ſegregatum. Quo nec nepos ipſe aut generatio ejus profutura jam conjungi poterit regno predicto medio cathenæ ſic conſciſſæ. Relativæ etiam ſunt ſingulæ cauſæ cathenæ quâ a Creatore pendat creatura, ſicut pater et filius qui nullum inter-medium patiuntur; quo nec eſt in hac cathena cauſa ſine immediate cauſato, nec cauſatum ſine immediate cauſante. Omnes etiam res ab alto ſuſpenſæ, interſciſſo medio quo pendent concito ad yma runt. Quare nec hanc legem effugere poterit filia regis et propago ejus, quin, dum linea per quam ipſæ omnes a defuncto rege ſuſpenſæ videbantur legis naturæ mucrone eſt conſciſſa, omnes ipſæ in terram corruerent, a regno predicto penitus excluſæ. Et cum non ſit aliquid, ut ſuperiùs eſt oſtenſum, quod non ad Deum per continuatas cauſas referatur, et Eidem annexum ab Eodem dependeat et ſervetur in eſſe; ex quo titulus quem nepos predictus ad avi ſui regnum pretendit, quem titulum jus ſuum ipſe appellat, ad Deum per continuatas cauſas, ut jam probatur, non refertur, quo nec titulus ille Deo cathenatus ab eodem dependet; titulum illum non eſſe aliquid, quo nec eſſe de natura rerum, (quare nec jus dici mereatur,) ex ſupradictis eſt comprobatum. Similiter et dum omne verum, omne juſtum, et omne bonum creatum dependeant hiis cathenis a ſumma veritate, ſumma juſticia, et ſummo bono, quæ ſunt Deus, Eidem firmiter cathenata; dum titulus ille, quem et jus ſuum nepos appellat, nec a ſumma veritate, nec a ſumma juſticia, neque a ſummo bono cathenis talibus eſt ſuſpenſus, non eſt titulus ille verus, juſtus, neque bonus. Unde et ſequitur regnum predictum titulo hujſmodi poſſideri iniquum eſſe et peccatum; cum ſola iniquitas et peccatum cathenarum predictarum effugiat nexus.

Cap. XXXVII.

Filia regis non poteſt eſſe Cauſa vel Medium quo Regnum ejus deſcenderet ad Nepotem.

ET licet Rex defunctus cauſa fuerit nepotis ſui, non tamen nepotem illum ſine medio ipſe cauſavit: quo medium illud ita eum diſtare fecit a nepote, quòd neuter alterum immediate tetigit; nam quod medio jungitur ſolum medium tangit, et per eum diſtare compellitur ne ſic adjuncto immediate ſit conjunctum. Quare cauſa tam remota cathenam conſuere nequit, dum inter cathenæ juncturas medium eſſe non poterit alienum; alienum dico quidquid intervenit, et a precedentibus non cauſatur, nec ſubſequencia cauſat, quo illud a precedentibus ad ſubſequencia propinquitatis affinitate aliquâ non attingit. Unde licet inter primam et tertiam cauſam rei cujuſque ſemper mediet alia cauſa, non eſt tamen media cauſa illa aliquid alienum, ſed domeſticum eſt et familiare, cum non eſſent continuæ tres cauſæ illæ, ſi non interveniſſet ipſa ſecunda cauſa. Quare dum regnum paternum cauſam nullam prebet filiæ regnare, nec ipſa jus regnandi conferre poteſt filio ſuo, cum talis juris ipſa ſit expers et immunis, quamvis ipſa medium ſit naturale et domeſticum inter avum et nepotem; quo medio ſanguis et hereditas privata avi transferri poteſt in nepotem;

reſpectu tamen regni, quod publicum dominium eſt et quod ab avo filia recipere nequit nec transferre poteſt in nepotem, alienum medium ipſa eſt et forinsecum, nec familiaritate aliquâ ipſis avo et nepoti conjuncta. Ut ſi quis de duobus dominiis, quorum unum ex parte patris et alterum ex parte matris ei deſcendit, poſſeſſionatus obierit ſine exitu de corpore ſuo exeunte, ipſe tunc medium eſt quo unum de dominiis illis ad proximos de ſanguine matris, et aliud ad proximos de ſanguine patris ſui transferentur; quo reſpectu hereditatis paternæ ipſe decedens alienus eſt cognatis matris ſuæ, et reſpectu hereditatis maternæ ipſe alienus eſt cognatis ſui patris. Sicque in uno ſuppoſito conſiſtere poteſt jus diverſum, quod et diverſimode ab eo deſcendet. Sic et in rege defuncto erat jus regni, quod publicum eſt et non poteſt ad filiam deſcendere; reſidebat etiam in eo jus hereditatis privatæ, quam poſt eum hereditabit filia ejus: in cujus privatæ hereditatis deſcenſu ipſa medium eſt domeſticum et naturale. Sed licet medium naturale ipſa ſemper ſit inter avum et nepotem, dum ad deſcenſum regni ipſa eſt aliena, medium tantùm ipſa eſt ſecundùm quid, ſed non ſimpliciter aut abſolute. Et ſicut in poſito jam caſu in uno ſuppoſito quieſcere poſſunt poſſeſſiones diverſarum naturarum, quo earum aliquæ ad poſſidentis agnatos, videlicet cognatos ex parte patris ſui, et aliæ ad cognatos ejus ex parte matris deſcendent; ſic in rege jam defuncto non ejuſdem erant naturæ regnum et reliqua poſſeſſio ejus. Nam regnum, quod dominium publicum eſt, ad feminas deſcendere nequit, ut ſuperius eſt probatum. Quare illud ad proximos de ſanguine ejus maſculos deſcendere oportebit, qualis ego ſum frater regis. Sed poſſeſſionem ejus reliquam, videlicet privatam, ad filiam ſuam deſcendere lex non prohibet, nec quin ipſa eam poſſideat ego jam renitor. Solum regnum eſt quod vendico, quod ad me per rectiſſimas continuataſque cauſas a fratre meo deſcendit ſine medio alieno, cum filium ipſe non habuerit qui inter ipſum et me mediare poſſit et continuare cathenam quæ ligat regnum ad Cauſam Primam, videlicet Deum. Quare rectâ et continuatâ cathenâ jus meum a Deo dependet; et neptis mea filia regis, licet conſimili cathenâ poſſideat poſſeſſiones privatas ejus, quæ etiam ei a Prima Cauſa predicta per continuatas cauſas deſcenderunt, medium eſſe non poteſt quo regnum ejus deſcendere poſſit ad ejuſdem regis nepotem. Sic quoque cathenæ quâ dependet regnum non concathenatur nec conſuitur privata poſſeſſio fratris mei; nec cathenæ quâ dependet poſſeſſio illa regnum ejus quomodolibet eſt annexum.

Cap. XXXVIII.

Exemplis hic affirmat quæ ſuperius probavit ratione.

PRETEREA in Regno Angliæ lex quædam talis eſt, quòd ſi quis de felonia aut prodicione convictus, vel, ut verbis utar legis illius, *attinctus* fuerit, mox ſanguis ejus ita per legem illam corrumpi judicatur, ut quamvis ipſe principis favore mortem evadat, non poterit tamen ille ex tunc ſuccedere parentibus ſuis in hereditatibus

eorum, nec quiſquam generationis ſuæ ſibi ſuccedet in hereditate ejus. Quare ſi ex tunc in vita talis attincti aut poſt mortem ejus pater ſuus obierit de patrimonio, licet maximo, poſſeſſionatus, non poterit per legem terræ illius filius ejus ſic attincti ſuccedere avo ſuo in patrimonio illo; ſed potius confiſcabitur illud, aut capitalibus dominis accedit ut eſchaeta, ſecundùm quandam differentiam legis in patria illa in hujuſmodi caſibus bene notæ. Quo, ſicut hereditas talis avi deſcendere nequit filio qui taliter eſt convictus, ſic nec illa deſcendere poterit nepoti ex filio ſic convicto, dum medius gradus eſt inter avum et nepotem, videlicet filius ille attinctus, licet inhabilitatus ipſe fuerit per legem terræ illius ad omnimodam hereditatem: quia tranſilire aut prætervolare gradum aliquem nequit aliquid quod deſcendit. Quare in regno illo ſi caſus quem diſputamus acciderit, dubitari non poterit, quin regnum quod petitur deſcendere non poterit in nepotem, cum mater ejus, per cujus medium ipſe illud optineret, non poſſit illud jure aliquo poſſidere. Sed an conſimilis lex ſit in regionibus aliis ſcribens hæc ignorat; reminiſcitur tamen qualiter in libro Numeri, xxvij. C°. ſcribitur, quòd filiæ Salphat, qui fuit de ſemine et tribu Joſeph, acceſſerunt ad Moyſen dicentes, "Pater noſter mortuus eſt in deſerto, nec fuit in ſeditione quæ concitata eſt contra Dominum ſub Chore, ſed in peccato ſuo mortuus eſt; hic non habuit mares filios, da nobis poſſeſſionem inter cognatos patris noſtri." Retulitque Moyſes cauſam earum ad judicium Domini, qui dixit ad eum; "Juſtam rem poſtulant filiæ Salphat, da eis poſſeſſionem inter cognatos patris ſui, et ei in hereditate ſuccedant." Per harum filiarum petitionem implicite edocemur, quòd ſi pater earum in ſeditione predicta morti adjudicatus fuiſſet, ut fuerunt omnes conſcii et rei ſeditionis illius, quo eorum heredes inhabilitabantur ad omne hereditamentum, etiam nec filiæ Salphat hereditario jure aliquid poſtulare potuiſſent per medium patris earum, licet filiæ illæ deſcenderint de Joſeph qui filius erat Jacob, cui et ſemini ſuo, ſicut et Iſaac et Abraham, tota terra Chanaan erat promiſſa a Domino. Nam ut in tertio et quarto libris Regum legitur, quotiens Dominus judicabat aliquos de regibus Iſrael per ydolatriam alia ve flagicia indignos amplius regnare, eos que punivit ultimo ſupplicio, filii eorum in regno illo nequaquam poſt eos ſucceſſerunt. Sic namque a regno illo excludebantur filii Nadab, qui fuit filius Jeroboam, filii Hela, qui fuit filius Baze, filii etiam Zambri, et filii Joram, qui fuit filius Achab, ac aliorum regum filii quamplurium. Quo dum ipſi excluſi erant a regno patrum ſuorum, eo quod patres illi judicabantur indigni regno, a fortiori multo filii illi preclusi erant ad poſtulandum regnum illud jure avorum et proavorum ſuorum, progenitorum regum ſic conjunctorum et punitorum; quo nulli eorum unquam deinde regnum illud poſſiderunt. Quare et Nepos qui jam contendit, dum mater ejus legis naturæ judicio inhabilis judicatur regno patris ſui, quo ipſe eidem matri in regno illo non poteſt ſuccedere, etiam a fortiori ſuccedere non poterit avo ſuo per medium matris illius. Sic quoque in Regno Franciæ nepos ex filia non ſuccedit avo in dominiis heredibus maſculis a rege collatis, nec in dicto Regno Angliæ in terris heredibus maſculis talliatis, ut ſuperius eſt oſtenſum. Quare dum nedum racionis diſcurſu ſed et clariſſimorum exemplorum evidentiis erudiris, Judicum ſcientiſſima, nepotem regis qui jam contendit ſuccedere non poſſe

avo ſuo in regno ejus, impone ei ſilencium ſententiâ tuâ, ne examen tuum ipſe amplius jam infeſtet, et judica cauſam meam, michi tribuens regnum fratris mei, quod a Prima Cauſa michi qui ei ſine prole regni capaci decedenti in proximo ſucceſſionis gradu conjunctus ſum, continuatis cauſis firmiſſimis cathenatur. Et non te tediat, oro, deceptatio mea tanto delata ſermone, quia dum cauſam diſputo mundi maximam non poſſum ego ejus merita ſermone modico referare, tempore namque non parvo creſcit quidquid erit magnum.

HIC SEQUNTUR DUPLICACIONES OMNIUM CONTENDENTIUM.

DUPLICACIO FILIÆ REGIS.

Cap. XXXIX.

Judicium in primam Parentem latum probat eam non fuiſſe Legi Naturæ ſubjectam.

HUNC Filia Regis, ſuper hiis quæ erga eam per Filium et Patruum tam argute replicata ſunt pauliſper ſuſpenſa ſtupore, reſpiracione tandem modicâ reſumpſit ſpiritum et Judicem ſic affatur. Non te latent, Judicum prudentiſſima, ſententiæ ſimul et merita omnium quæ ſuaſerunt adverſarii mei. Nam non ut hominis intellectus tuus; tu namque verſutias omnium a veritate deviantium primo contuitu deprehendis, quo te ſuper replicatis ſolicitare amplius temerarium fore arbitror; dum et proverbialiter dici ſoleat, "Non licet docere Minervam." Replicata igitur illa gravitatis tuæ libramini relinquens, amborum contradicentium objectis ſatisfacere conabor unico ſub contextu. Filius quàm plurima mulierem viro innocenciæ tempore fuiſſe ſubjectam ſuadentia jam invexit, et patruus per mulieris culpam ſubjectionem mulieri fuiſſe injunctam ex Divino judicio in eam lato revelavit. Tunc ſic, ſi pro tranſgreſſionis pœna mulier ſubjectionem luit, ante peccatum ipſam non fuiſſe ſubjectam illud judicium tunc declarat. Quis equitatis cenſor non aliam reo quàm quæ juſto debita eſt pœnam imponit? Et ſi ſubjectio pœna non eſt, cur ipſa mulieri imponitur pro peccato? Et ſi pœna eſt, quare eam ſuſtinuit ſexus muliebris non dum lapſus? Ratio reddi non poteſt. Sic ergo ex Divino judicio ſupradicto clariſſime edocemur, mulierem ante peccatum viro non fuiſſe ſubjectam, dum pro peccato dicioni viri eam Dominus ſic ſubegit. Unde et eodem judicio evacuantur omnia quibus Filius aut Patruus mulierem de jure naturæ viro fuiſſe ſubjectam probare nituntur.

Cap. XL.

Solum Mulieres Nuptæ subduntur Viris judicio Divino.

PRETEREA, licet judicium Dei predictum mulierem viri subjiciat potestati, non omnem mulierem, sed solam conjugatam, potestati viri judicio illo fuisse subjectam examinis illius circumstanciæ patulo nos informant. Nam dum Adam et Eva caro erant una, et vir, ut ait Apostolus, caput est mulieris, dum parens prima caput suum dirigere presumpserat, quod naturæ non congruebat, justitiæ equitati congruit ut ipsa pro suæ præsumptionis culpa deinceps viri sui subjacere regimini artaretur, quam pœnam in cunctas suæ posteritatis consimiles virus sceleris illius transfudit. Quo mulieres solutas, quæ se viris ut capitibus minime subdiderunt, judicii illius involvi censurâ, ut parentem primam, quæ se viro ultro semel subdidit, prophanum videtur suspicari. Quare dum ego filia regis nullius conjugii nexu homini jam conjungor, quo judicii predicti non implicor censurâ, lex illa Evæ et sexui ipsius sequuto imposita nec me viri cujusquam subdidit potestati, et per consequens nec a regionis quam postulo imperio me propellit. Hiis, ut meæ disceptationis termino, respondeant Filius et Patruus, si suppetat virtus. Nam auditorium istud pro hac lite non propono meis questubus amplius molestare.

DUPLICACIO NEPOTIS.

Cap. XLI.

Hic ostendit Filius primum dictum Matris suæ esse solutum per Patruum ejus.

HÆC audiens Filius et quasi in yronicam prorumpens vocem ait; Consumpta jam esse cerno omnia tela matris meæ, dum tam exilia frivola quoque, salvâ pace ejus, ipsa premit in subsidium causæ suæ. Duo etenim sunt quæ ipsa concipit, sed verius conjecturat, a prelibato judicio resultasse; unum, mulierem judicii illius censurâ viro fuisse primitus subjectam: alterum conjugatas solas sub obediencia viri illud judicium vinculasse. Sed quid hiis duobus stolidius ymaginari, majus ve veritate dissonum poterit cogitari? Horum tamen primum, antequam illud mater premeret, per patruum ejus in replicacione sua penitus vacuatur, dum ostenderet ipse evidentiis clarissimis pro deserta obedientia quam viro mulier debuit judicium illud prodiisse. Quo edocetur quod non sententiâ illâ mulier viro subjicitur, sed quia ipsa, antea viro subjecta, ejus prelacioni recalcitravit, pristina ejus subjectio sententiâ illâ majus solito ei inculcata est et aggravata; non tamen nova subjectio injuncta est ei, sed veteris qualitas jam mutatur, ut quæ primo libera fuit et

voluntaria, mulieris arbitrio regulata, jam facta eſt ei neceſſaria quodamodo et penalis, viri arbitrio regulanda. Tamen ut iſta clarius emineant, etiam ea quæ ſecundo conjecit genetrix mea, libet quædam in hac concertatione etiam et in priori Tractatu digeſta iterum ruminare, ea que parumper tractare liquidius.

Cap. XLII.

Qualitate et non Subſtancia diverſificatur ſubjectio Mulieris poſt peccatum a ſubjectione ejus naturali.

IN priori Tractatu oſtenſum eſt virum ſuper feminam et cunctas creaturas mundi hujus a primi hominis conditione prelatiam habuiſſe, quam Sanctus Thomas, in Prima Summæ, Queſtione iiij^xx^ xvj. Articulo iiij^o^, dominium appellat. De quo ipſe etiam in tertio libro De Regimine Principum ſic ſcribit; "Si loquamur de dominio prout importat officium conſulendi et dirigendi, illud naturale poteſt dici, quia in ſtatu innocenciæ hoc fuiſſet. Et hæc eſt ſententia Auguſtini in XIX libro De Civitate Dei. Unde illud competebat homini in quantum homo eſt animal ſociale et politicum; talem namque ſocietatem oportet ordinare, et in hiis quæ ſunt adinvicem ordinata oportet ſemper eſſe aliquod primum et dirigens, ut Philoſophus tradit in primo Politicorum; et hoc oſtendit ratio ordinis." Et poſt pauca, "Ideo ſecundùm hanc conſideracionem dominium hominis ſuper hominem eſt naturale, et eſt in angelis, et fuit in primo ſtatu hominis." Hæc ille. Et in eodem tractatu, libro II° ipſe ſic dicit; "Sciendum eſt quod ex duplici parte regimen politicum preponitur regali. Primo quidem ſi referamus dominium ad ſtatum integrum humanæ naturæ, qui ſtatus innocentiæ appellatur, in quo non fuiſſet regale regimen, ſed politicum, eo quod tunc non fuiſſet dominium quod ſervitutem haberet, ſed preeminenciam et ſubjectionem in diſponendo et gubernando multitudinem ſecundùm merita cujuſque: ut ſic vel influendo vel recipiendo influentiam quilibet eſſet diſpoſitus ſecundùm congruentiam ſuæ naturæ." Ex quibus verbis erudimur quòd tempore innocentiæ humanæ fuerat prelatia, quod ipſe dominium vocat, importans officium conſulendi et dirigendi, ſimiliter et ſubjectio. Sed dum tempore illo non fuerunt homines plures quam vir unus et mulier una, dum mulier illa prelatiam illam tunc non habebat, virum eam tunc habuiſſe heſitari nequimus. Superius quoque nos, ſimiliter et patruus ſupradictus, oſtendimus, nedum ex Sacræ Scripturæ ſententiis, ſed et ex evidentiis clariſſimis et dictamine rationis, mulierem ſemper naturaliter viro fuiſſe ſubjectam. Ex quibus omnibus lucet, qualis hæc mulieris ſubjectio fuerat, eâ non dum ſpretâ. Nam, ut ait Sanctus Auguſtinus (xiiij. Lib. De Civ. Dei), in Paradiſo ante peccatum affuit homini omne quod voluit voluntas bona, et defuit omne quod animum feliciter viventis offenderet. Voluit ergo mulier ſubjectionem quam in Paradiſo ipſa habuit nondum peccatrix. Et cum nichil ſit volitum quod non dilectet, delectabilis tunc erat ei ſubjectio ejus; et quam delectabilis ipſa

tunc fuerat, etiam ex ſupradictis patefactum eſt. Nam delectare quempiam magis non poteſt aliquid, quàm per influentiam in ſingulis dubiis agnoſcere veritatem. Nec optabilius quidquam eſſe poterit quam alterius diligenciâ et operâ in omnibus tute dirigi, nec ambiguis aliquibus agitari, et ardentius aliquid non gliſcit animus hominis quàm illud explere quod ipſemet naturaliter concupiſcit. Singula hæc ante peccatum operata eſt in muliere naturalis ſubjectio ejus; ut ex ſupradictis patere poteſt conſideranti. Pudeat igitur dicere ſubjectionem hanc in peccati pœnam mulieri fuiſſe injunctam, cum punire non poterit quod ſic omnis neſcium eſt mæroris. Sed profecto pœnam mulieri intulit judicium prelibatum, dum pro peccato illud in eam promulgatum eſt; ſubjectionem namque, quâ ſic delectabatur mulier, judicium illud fecit eſſe moleſtam, dum neceſſariam eam eſſe ſanxit mulieribus omnibus conjugatis et ſolutis. Quid tædere magis poterit quam libertate privari, aut faſtidire amplius quam deſtitui proprio arbitrio, et arbitrio ſubjici alieno? Cruciari etiam oportebat mulierem quæ ſub minis tremere cogebatur, quæ antea tantis gaudiis fruebatur. Dominus enim quaſi *dans minas* dicitur; quare mulieri minari poteſt vir, cum dominus ejus conſtitutus ſit, quo et pœnas inferre. Hæc omnia judicium predictum in muliere operatum eſt. Pœnam igitur non modicam illud mulieri inflixit, dum nedum tot delectabilia, quæ ſuperius recitantur, ſibi abſtulit, ſed et eam tot incommodis circumcinxit. Sicque jam evidet, quod ſubjectio mulieris, quæ ei dudum fuerat optabilis et jocunda, modo per judicium iſtud amariſſimis circumſtanciis eſt reſperſa; circumſtanciæ namque, ut dicunt Leges, qualificant actus hominum. Qualificatur vero mulieris ſubjectio hujus judicii cenſurâ qualitatibus amariſſimis et moleſtis. Dignitatem viri hoc judicium potentiâ auxit et honore, ſed mulieris ſubjectionem obedientiâ arcius quam antea compreſſit. Qualitatem attulit ſubjectioni mulieris, ſed nichil abſtulit a priſtina ſubſtantia ſubjectionis ejus; veterem ſubjectionem confirmavit, ſed novam ei penitus non injunxit.

Cap. XLIII.

Mulieres nedum maritatæ ſed et ſolutæ ſemper ſubduntur Viris.

SECUNDUM quod aſſeruit Mater non minus quam primum meretur reprehendi. Dixit enim judicium prelibatum ſolas conjugatas mulieres viris ſubjugaſſe. Sed quid opinione iſtâ remotiùs diſtat ab dictamine rationis? Nonne oſtendimus nos muliebrem ſexum in generis humani initiis plaſmatum eſſe ſexui virili ſubjectum? Unde dum mulier prima dirigere virum preſumpſit, ipſa ſui ſtatus gradum in ordine univerſi tranſgreſſa meruit pœnas prædicto judicio diffinitas. Quid tunc peccavit conjugum, ut illud ſui complices graviori ſolito ſarcinâ oneraret? Non peccavit illud, ſed muliebris erat ſexus qui deliquit. Quo conjugatas et ſolutas pœna una paſſim merito jam involvit; a vicio namque errantis ſexus erupit peccatum mulieris, et non a matrimonii ſacramento. Nam etſi

mulier prima peccatrix conjux non fuiſſet, ſolitaria ejus vita eam non defendiſſet a preſumptionis ſuæ crimine, nec a pœna quam meruit pro eodem; quo peccato illo non fœdatur matrimonii ordo, quamvis illud luat omnis mulierum ſexus; pœna etenim ſemper delinquentem perſequitur, et non punit innocentem; quare matrimonium, quod innocens fuit a crimine parentum primorum, immune etiam perſeverat a pœna quæ eos pro eorum crimine cruciavit. Abſit igitur aliquem ita deſipere, ut tantùm mulieres nuptas putet judicio predicto vel etiam lege naturæ viris fuiſſe ſubjectas, cum matrimonium feminas libertate potius ditet quam humiliet ſubjectione. In ſociam recipitur mulier omnis cum nubat et nunquam in ancillam. Quare Adam uxorem ſuam ſociam vocans, allocutus de crimine ſuo, ait Domino, "Mulier quam dediſti michi ſociam dedit michi de ligno et commedi." Quo fit ut ſi ante ſponſalia mulier ſerviat viro, copulata deinde ei conditionem ſuam mutat, ejuſque efficitur conſors cujus antea erat ancilla. Nam ſic mulierem honorant nuptiæ ut poſt earum contractus mulieres honoribus virorum quibus maritantur ſemper reſplendeant. Sic Heſter paupercula, Aſſueri regis nuptiis tradita, facta eſt maxima mundi regina. Sic et omnis mulier Regi nupta Regina efficitur, Duci copulata Duciſſa, Comiti Comitiſſa, et ſic de aliis ſtatibus univerſis, dicentibus Legibus quòd mulieres clareſcunt radiis virorum ſuorum. Nam ſi uxores aliâ ſubjectione quàm ſociali, quæ civilis appellatur, humiliarentur ſub viris ſuis, ſtatus earum inequalitas humilitas que eas verecundiâ quâdam retraherent a thoro miſtiſque amplexibus virorum ſuorum; quod matrimonii ſacramento minime conveniret. Quare non legitur nobili nuptam deinceps, etiam inter Barbaros, ancillari. Neque Deus Pater Fili Sui Matrem nuptiis tradidiſſet, ſi per eas ipſa extunc fuiſſet minus quam antea honoranda. Nec mulier quævis a conjugio ſoluta a viri abſolvitur poteſtate, quia etſi ſub paterna dicione non remaneat, obedienciam ejus qui patriam ſui incolatus ſuppreme regit ipſa non evadet. Quare ſolas conjugatas mulieres viris eſſe ſubjectas nephas eſt putare.

Cap. XLIV.

Hic oſtendit ſententiam Divinam repugnare opinioni Matris.

PRETEREA ſententia Divina erga mulierem lata bifaria fuit et biſacuta; quia eam non tantùm prefatâ ſubjectione compreſſit, ſed eam erumpnis multiplicatis, pariendi doloribus, mancipavit; quæ pœna cunctas indiſtincte mulieres gravat, non diſtinguens maritatas a ſolutis. Quare tunc ejuſdem ſententiæ pars altera ad univerſas mulieres, ut illa, extendi non debeat, cauſa non ſentitur, cum neque conditionata modificative iſta fuerit, ſed, ut prima, verbis puris prolata ſimpliciter. Et dum conjugatas et celibes eadem cauſa pares fecerit in crimine, veriſimile non eſt tantum Judicem, qui omni æquo arbiter eſt, eas in pœna diſpares judicaſſe, aut prolem, quæ non niſi in parente peccavit, acriùs pro peccato illo cruciare quo ipſa ſacramento matrimonii fuerit inſignita. Neque enim taliter pro Ade, qui

conjugatus erat peccato, Judicis illius ſententia pervagavit, cujus filios maritatos et non maritatos conſimili laboris pœnæ et ſudoris eſſe fecit indifferenter obnoxios; vere nec in ſerpentis genimine, quod cum omni mulieris ſemine bellum intractabile gerit, ſententia predicta hujuſmodi diverſitatis modum operata eſt. Quare tantam diſcrepanciam ſeu verius inconvenientiam in tanti Judicis cenſura fuiſſe dicere, vel ſaltem opinari, non minoris eſt imprudenciæ quam pudoris. Qualem quoque dominum mulieris Divina ſententia virum conſtituit, quale ſit dominium ejus, qualiter que illud differat a dominio quod Sanctus Thomas dicit hominem tempore innocentiæ habuiſſe, jam expedit perſcrutari.

Cap. XLV.

Qualiter dominium quod propter peccatum Viro datum eſt differt a dominio quod erat Tempore Innocenciæ.

DOMINUS enim, ut ſuperius eſt dictum, quaſi dans minas per ethimologiam nominatur; minæ etenim ſunt futurarum pœnarum conditionale judicium, ut, ſi is cui minatur non faciat quod injungitur ei, pœnas ipſe ſubeat ſibi ſic ſtatutas. Non igitur ſine pœna domino ſubjicitur, dum timere ſubdito ejus ſemper neceſſe ſit, etiam et treme-e cum delinquat. De cujuſmodi dominio Sanctus Auguſtinus, C°. l. xix. De Civ. Dei, ſic ait; "Factus eſt homo ad ymaginem Dei ut irrationabilibus dominetur, non autem rationabilibus, quia ut homo homini dominetur ex peccato contingit." Et ſi ex peccato contigit hoc dominium quod eſt, tunc quid dicit Sanctus Thomas dominium aliquod eſſe naturale et fuiſſe ante peccatum? Profecto dominium omnimodo, quo et proprie dictum, importat dignitatem et puniendi poteſtatem, quo et minas imponendi, et dominium tale non habuit homo ſuper hominem ante peccatum ejus; de quali dominio loquitur Sanctus Auguſtinus in loco predicto, quia dominium hujuſmodi pro peccato primitus conceſſum eſt, videlicet viro ſuper mulierem propter peccatum ejus. Sed dominium de quo loquitur Sanctus Thomas licet dignitatem importabat, non tamen poteſtatem habuit contumacem ſubditum puniendi, nec ſibi minas quomodolibet imponendi, quo non proprie et omni modo dignitas talis dominium dici meruit; ſed quodam loquendi modo dignitas hujuſmodi dominium fuit, quia vir potitus eâ mulieri honore prefuit et officio eam dirigendi, ut habens officium preeſt non ſervo ſed libero, dirigens eum ad ejuſdem liberi commodum vel commune bonum; quale Sanctus Thomas in ſupradicta iiij^or^xvj^a^. Queſtione dominium appellat. Domini etenim appellantur filii regum et principum, qui ſolum dignitatibus fulgent abſque juriſ fictionis poteſtate. Sic et reginæ dominæ nominantur, quamvis non habeant poteſtatem regnicolas puniendi. Tali etiam loquendi modo Philoſophus in Politicis precellentes ſapientiâ dominos appellat, dicens quòd ſicut pollens viribus et deficiens intellectu eſt naturaliter ſervus, ſic vigens intellectu et induſtriâ eſt naturaliter dominus. Non tamen ſemper ſapientes dominos neque

intellectu deficientes naturaliter ſervos eſſe intelligimus, quia de ſervis Sanctus Auguſtinus in libro predicto ſic dicit, "Nuſquam Scripturarum legimus ſervum, antequam hoc vocabulo Noe juſtus peccatum filii ſui vindicaret." Sed origo vocabuli illius *a ſervando* dicitur, quia qui jure belli poterant occidi, dum *ſervabantur* dicebantur *ſervi*. Quare non proprie nominabat Philoſophus deficientes intellectu ſervos, neque ſapientiâ pollentes dominos, ſed quodam loquendi modo. Sic et Sanctus Thomas, quia quodam modo dirigentes et conſulentes ſubditos domini ſunt, videlicet dignitate et officio, ut ſunt dominationes in ordine Angelorum qui ſolum per influentiam inferiores dirigunt, hujuſmodi officium dominium appellabat; ut patet in Queſtione predicta, ſimiliter et in predicto ſecundo libro De Regimine Principum, ubi dicit dominium ante peccatum fuiſſe politicum, et non habuiſſe ſervitutem, ſed ſolum preeminenciam et ſubjectionem; quo illud prelatia illa erat de qua in priori Tractatu locutum eſt, quam Dominus dedit viro, dum eum plaſmavit et voluit preeſſe ſingulis hujus mundi creaturis, quæ prelatia expers tunc erat omnis pœnæ et minarum. Tamen modo ac ſemper manet prelatia aliter quam prius ſupra mulierem qualificata, cum ei jam minas ſimiliter et in caſu pœnas tribuat, quo dominii nomen ſuper eam ipſa proprie jam ſortitur.

Cap. XLVI.

Mulier Viro ſubditur dum in aliqua dominandi ſpecie ei obedit.

POST dominium quod viro ſuper mulierem a Domino collatum eſt conſtitutum eſt ab homine dominium aliud quo homo homini utriuſque ſexus dominatur, quod politicum dicitur; non illud quod ante peccatum erat neſcium omnis pœnæ, ſed aliud quod pœnas intulit omni ſubdito delinquenti. Hoc dominium tempore nequiſſimi Cayni in civitate Enoch, quam ipſe edificaverat, primo ſubrepit, quo nedum politicum ſed et civile appellatum eſt. Deinde poſt diluvium cum Nembroth gigas potenciam ſuper homines uſurpaſſet, ingruentibus ex hoc inter eos bellis, dominium deſpoticum emanavit, quo victor victum ſervitute compreſſit. Ac deinde tempore Nini filii Beli qui primus, ut dicit Sanctus Auguſtinus, nomine Regis inſignitus eſt, prorupit dominium tercium quod regale nuncupatur. Ac poſtea diu, tempore videlicet Julii Cæſaris, pullulavit Romanorum dominium maximum, quod ex tunc Imperiale vocabatur, quod et politicum eſſe ſimiliter et regale Sanctus Thomas aſſerit in ſupradicto tractatu ſuo De Regimine Principum. Alia quoque dominia diverſis nominibus aliis appellata, ut ea quæ Philoſophus Ariſtocrachia, Oligarchia, et Democrachia appellat, necnon et alia quàm plurima, ab inſtitutionibus hominum diverſis temporibus et locis effluxerunt, quæ omnia mulieres ut viros, conjugatas ut ſolutas ſuæ ſubjugaverunt ditioni, non ſexui parentia aut conditioni. Quo mulieres non ſolum viris propriis, ut Eva Adæ, ſed et aliis viris in quorum juriſdictionibus et territoriis ipſæ manebant ſubjectæ ſunt. Nec per hoc maritatæ mulieres declinare valebant dominia maritorum

ſuorum; ad differentiam tamen ceterorum dominiorum, quæ tam copioſe invaleſcebant, dominium viri ſuper uxorem ſuam yconomicum, et ſociale vel civile veteres nominabant. Yconomicus enim eſt tam pecuniæ quam frugum et omnium quæ poſſidentur diſpenſator; diſpenſat namque maritus omnia quæ poſſident conjugati. Civile autem *a civitate* dicitur, non eâ quæ muris circumdatur, ſed ab ea quam Sanctus Auguſtinus in primo libro De Civ. Dei ſic diffinit: "Civitas eſt hominum multitudo aliquo ſocietatis vinculo ſociata, de quali civitate materialis civitas nominis ſui traxit originem." Similiter et dominium civile: unde civile dominium quaſi dominium dicitur ſociale, quale vir quiſque habet ſuper uxorem ſuam quæ ei, ut ſupradicitur, conjungitur ut ſocia et non ut ancilla; ex latere namque viri primi plaſmata fuit uxor ejus, ut eſſet illi collateralis et ſocia. Sub hoc dominio ſubjicitur uxor omnis viro ſuo, licet ipſa et vir ejus aliis viris ſub aliis dominiis ſint ſubjecti. Sed ſoluta mulier dominium iſtud yconomicum ſubire nequit: et tamen ipſa ab omni dominio non poteſt eſſe libera, cum ſub poteſtate viri vivere omnis mulier juſſa ſit, et ipſe ſit conſtitutus dominus ejus; omnia namque quæ judicialiter dixerat Dominus parenti primæ, non ſolum ei ſed et omni dixerat ſexui muliebri; quo mulier nulla pœnam Evæ injunctam effugere poteſt, ſicut nec pœnam Adæ ſanccitam evadere poterit ullus homo; quare omnis mulier, ſicut et Eva, ſub dominio viri eſſe judicata eſt, dum Eva ſic ſubjici judicatur. Non tamen omnis aut aliqua mulier ſub omnis viri poteſtate vivere jubetur, nec alicujus viri poteſtati mulier ulla poſt Evam judicio Divino diffinitè commiſſa eſt; dixerat namque Dominus omni mulieri, "Eris ſub poteſtate viri," et non dixit, "Eris ſub poteſtate omnis viri," nec "ſub poteſtate viri tui," quo ſolas conjugatas ipſe ſubjugaſſet; ſed indiffinitè Ipſe ait, "Eris ſub poteſtate viri," quo ſi ſub alicujus viri poteſtate ipſa fuerit, judicii illius cenſuram illa non declinat; propoſicio namque indiffinita vera eſt, ſi in uno ſuppoſito ipſa ſit vera. Sic conſimiliter non alicui dominandi ſpeciei mulier Divino judicio ſubjicitur; quo ſi yconomico, politico, vel regali, ſeu aliquo alio dominio dominanti viro mulier ſubjecta ſit, ipſa ſub poteſtate viri vivit et dominio ejus ſubjicitur. Abſit tunc ſentire mulierem ullam licet impuberem, quæ paterni dominatus metum non evaſit, nec thorali conſortio viri apta eſt, a viri emancipari dominio, quia mulieres ſingulas, conjugatas et ſolutas, indiſtincte, ſimpliciter, et preciſe amplectitur illa pœnalis Domini ſententia in Evam lata, "Eris ſub poteſtate viri et ipſe dominabitur tui." Non tamen omnia quæ de mulieris obedientia ad virum Sacra Scriptura commemorat ad omnem ſexum muliebrem referenda ſunt; quamplurima namque de ſola obedientia quam uxor debet marito loquuntur; ut eſt illud I Pet. iij. C°, "Mulieres ſubditæ ſint viris ſuis;" et illud ibidem, "Sic enim aliquando ſanctæ mulieres ornabant ſe ſubjectæ propriis viris, ſicut Sara obediebat Abrahæ dominum eum vocans, cujus eſtote filiæ benefacientes." Sed hæc clare diſtinguit Canon ille xxxiij. Q. v^a. *Hæc ymago;* ubi in fine ſic dicit; "Satis hinc apparet quemadmodum viris feminas ſubditas eſſe, et pæne famulas lex eſſe voluit uxores." Ecce, de omnibus loquutus Canon mulieribus dicit eas ſubditas eſſe viris, ſed ſolas uxores voluit pæne ut famulas ſubdi. Non expedit jam, ut opinor, Judicum

rectiſſima, me amplius pro genitricis meæ objectionibus tuam ſolerciam commovere; tempus quoque interpellat, ut ad replicata patrui ejus me convertam. Quare amodo ad ea, ut valeo, reſpondere conabor, et utinam in illis non majora quam in itis diſcrimina reperirem.

HIC DUPLICAT NEPOS AD ALLEGATA FRATRIS REGIS.

Cap. XLVII.

Nepos primo deſpicit leges Regum forinſecorum.

PATRUUS ipſe avunculus meus magnus, licet ſermone prolixo argutoque d ſputaverit, ſolum duo quæ meæ ſucceſſionis titulo obeſſe poterunt probare viſus eſt. Unum, videlicet, hereditatem omnem quæ deſcencionis titulo ad aliquem poterit devenire gradatim continuate que ad eum deſcendere oportere, aſſeruit, nec deſcencionis gradum aliquem prætervolare aut tranſilire poſſe, quæ et rationibus ex naturæ curſubus ſalientibus probare non minimo diſcurſu conatus eſt. Et ſecundum quod invexhit hoc erat. In Regno ait Franciæ, ſimiliter et in Regno Angliæ, ſi dominium aliquod cuiquam donetur habendum ſibi et heredibus ſuis maſculis de corpore ſuo progreſſuris, dominium illud ad donatarii illius nepotem ex filia per leges regnorum illorum deſcendere prohibetur. Sed quid hoc ultimum noſtro certamini conferre poteſt, dum nos de Juris Naturæ judicio contendimus, quod ſolum litem noſtram valet ſopire? Leges vero Franciæ et Angliæ non exultant ſepta earumdem regionum; quo nobis opitulari nequiunt qui de regno contendimus quod ſuperius neſcit; quare ſicut non alienorum poteſtati ſic nec alienorum legibus illud eſt ſubjectum. Contra hoc igitur ultimum me multis ſermonibus calcitrare non prudenciæ aſſcriberetur, ſed inſolentia potius diceretur. Quare ſolum ad id quod primitus ipſe aſſeruit replicare depoſcit tota vis diſputationis ſuæ; igitur ad illud elidendum, omiſſo reliquo, ſic procedo.

Cap. XLVIII.

Hic invehit Nepos Leges Civiles erga replicata Magni Avunculi ſui.

LEGES Civiles impuberum tutelas proximis de eorum ſanguine committunt, a nati fuerint ſeu cognati. Mulieri tamen, preterquam matri et aviæ infantis, lege illæ tutelam non concedunt. Tamen ſi amitæ materteræ ve filius proximus maſculus de ſanguine ſit pupilli, nec defectum patiatur quo a tutoris officio debeat repelli, leges illæ in vita amitæ ſimiliter et materteræ tutelam pupilli ipſi filio tunc committunt, racione proxi-

mitatis ſanguinis quâ filius ipſe infanti attingit, non obſtante quod idem filius propinquitatem illam contrahit a ſuperſtite matre ſua; ut in Titulo De Legittima Tutela, &c., Collacione ix^a. manifeſtius declaratur, ubi inter cetera ſic ſcribitur, "Sanccimus enim unumquemque ſecundùm gradum et ordinem quo ad hereditatem vocatur, aut ſolum, aut cum aliis, defunctionem tutelæ ſuſcipere, nullâ neque in hac parte differenciâ introducenda de agnatorum ſeu cognatorum jure, ſed omnibus ſimiliter ad tutelam vocandis qui ex maſculorum ſive ex feminarum prole deſcendunt minori conjuncti," et poſt pauca, "Mulieribus etiam nos interdicimus tutelæ ſubire officium, niſi mater aut avia fuerit." Quare ex quo filius amitæ vel materteræ pupilli, racione matris ſuæ quæ tutelam ſuſcipere nequit, admitti debeat ad tutelam etiam in vita matris ſuæ; cur nepos defuncti regis ex filia regnum avi ſui quod mater poſſidere non poterit, proximitatis cauſâ quâ ipſe per matrem avo ſuo conjungitur, etiam in vita ejuſdem matris, poſſidere non valeat, Lex prænotata Civilis cauſam non relinquit. Etſi Imperator auctoritatem ſtatuendi legem quæ cauſam noſtram diffinire poſſit habere minime ſenciatur, lex tamen per ipſum condita probat in noſtro caſu quid ſit judicandum, dum contra legis naturæ equitatem Leges Civiles non diffiniunt aliquid, nec affirmant.

Cap. XLIX.

Duplicatio Fratris Regis, et primo probat ſingulas leges oportunas eſſe in hoc conflictu.

TUNC clam ſubridens paululum Frater Regis ſic locutus eſt; Potentiſſimorum mundi regum jura Nepos Regis parvipendit, eo quod regnum de quo contendimus regum illorum non ſubjacet dicioni; Imperatoris tamen leges, qui nec regno illi dominatur, admittendas fore in hoc conflictu ipſe jam affirmat. Quid iſto remotius eſt a judicio racionis? nam ubi conſimilis cauſa eſt, ibi, ut dicunt Leges, et ſimile judicium eſſe deberet. Et dum nepos iſte Cæſaris, qui in hac cauſa cognoſcere nequit, leges allegat, cauſam quare predictorum regum leges ipſe refutare deberet ſibi non reſervat; etiam tacite ipſe concedit quod palam expreſſe que primitus denegavit. Et ſi, ut ipſe aſſerit, Leges Civiles naturæ legis precepta non deſerant, aliter de tantorum regum legibus ſentire temerarium fore videtur ſimiliter et non æquum. Igitur, ſicut Civiles ita et Regum leges in hac diſceptatione utiles fore nedum ſua demonſtrat oratio, ſed et idem indicat dictamen rationis; non quia legiſlatorum talium legum auctoritas aliquid tribuit examini hujus cauſæ, ſed quia eadem ratio quæ eos concitavit ad leges illas taliter condendum, etiam et alios concitare poterit ad conſimiliter judicandum. *Jus* namque *a juſticia* eſt, dicente Sancto Auguſtino, "Ubi juſticia vera non eſt, nec jus eſſe poteſt, quia quod jure fit, juſte fit," (De Civ. Dei, libro xix.). Quare et omnium regnorum jura ego admitto ut in hac lite quodammodo oportuna, dum juſticiæ illa revelant veritatem, quæ lex naturæ eſt, ut in priori Tractatu extat diffinitum. Legum igitur Civilium ſententias, ſicut nec predictorum regum, in hac concertatione minime refutamus, licet

non earum, ſed ſolius Legis Naturæ, auctoritate hæc lis poterit terminari. Quare et legis illius Civilis quam jam profert nepos regis ſententiam ego non recuſo, quia et eam a finibus legis naturæ fuiſſe egreſſam non diffido. Quid enim magis convenire poterit legis naturæ conſilio, quam orphanum tenerem utroque parentum orbatum, qui ſe regere neſcit, viri probi de ſanguine ejus proximi regimini commendare? Quis tenerius favorabiliuſque talem alere velit quam proximus de ſanguine ejus? Et magis viro quam mulieri congruit talem inſtruere moribus et virtute, ejus quoque patrimonia regulare, ac de eorum proventibus raciocinium reddere juveni, cum pubes factus fuerit et adultus. Mulier vero, pupilli more, viri indiget curâ etiam in propriis factis ſuis; quare eam nedum natura virili ſuppoſuit regimini, ſed et lex Divina. Igitur legem predictam Collationis ix^æ. mente amplector, ſimiliter et collaudo. Quo jam ſolum mihi ſupereſt, ut quare ipſa quæ replicationibus meis repugnare aſſeritur eiſdem nec contraire, neque officere poſſint, jam oſtendam; quod ut faciam ſic progredior.

Cap. L.

Hic oſtendit quam diſſimilis eſt caſus jam poſitus caſui diſputato.

NON aliquid ſtatuit lex illa Civilis quod meis directe obviat replicatis; quo ſi quid contra ea lex illa agere ſenciatur, per obliqum, ut ſimilitudinis vigore, eam hoc facere neceſſe eſt fateri. Quare quàm ſimilia ſunt illa quæ hæc lex ſtatuit ad ea quæ ego ſuperius exaravi primitus congruit ut queramus. Hæc lex tutelam quam matri denegat, filio tribuit; ego regnum quod matri negat lex naturæ etiam filio denegavi. Hæc lex ad officium oneris vocat filium mulieris; ego mulieris filium ab officio propuli, non tantum oneris, ſed et honoris. Lex illa judicat quis privatum quoddam miniſtrabit officium; ego non de privato ſed de publico officio diſputavi. Illa virum dignum eligit ad alterius obſequium; ego non alterius ſed hereditatem propriam, non electionis ſed deſcenſionis titulo, indifferenter digno contuli et indigno. Ipſa maturum virum eligit providum et ſenſatum; ego juvenes admitto, nec naturæ defectu reſpuo inſenſatos. Ipſa ad miniſtrandum, ego ad dominandum; ipſa ad alienum, ego ad proprium comodum homines preficimus. Quid plura? Ego ad dignitatem a qua mulieres abigit natura nec earum filios jam admitto; ſed lex illa ad humile officium quod mulieres exercere non ſpernit natura quarumdam earum filios recipit, nec omnes abdicat mulieres. Quare dum ex factis, ut dicunt Leges, jus metimur, tam diſſimilia facta nec meriti conſimilis jura ſimilia ſive jus unum regere non valebunt. Non eodem jure, ut ſuperius eſt oſtenſum, officium publicum regitur et privatum; nec ſub ejuſdem juris ratione cadunt hereditas et officii collatio, dum unam heredi conferat jus deſcenſus, alteram benemerito ratio humana diſtribuit, ut jam facit hæc lex Civilis; quo tutela ſepius in Legibus *munus* appellatur. Sub una vero et eadem juris ratione cadere oportebit ſingulos caſus qui unâ lege regentur. Quare non lege conſimili criminale facinus regitur et tranſgreſſio

perſonalis, neque predialium deſcenſus ſimiliter regitur ut contractus. Reale eſt quod petimus regnum, deſcendibile preregnantis heredi; ſed perſonalis cura eſt impuberem regere, ejus quoque patrimonium regulare. Quo lex quæ rectorem talem eligere novit neſcia eſt juris hereditarii deſcenſus. Sic lex quæ criminalia plectit non didicit in perſonalibus mitigare rigorem; unde tot ſunt legum ſpecies quot factorum merita ſunt diverſa. Sic judex in criminibus veritatem extorquet torturis, in perſonalibus tertii depoſicione veritatem agnoſcit Sic realia bona agnatis cognatis que deſcendunt, mobilia tamen non illi ſed legatarii executores ve rapiunt et diſponunt. Quare dum caſus legis illius Civilis et caſus quem diſputamus tam diſpares ſunt in meritis, diſſimiles et in factis, quo nec ſub unius juris cadunt ratione, nec lex una, nec lex ſimilis ambos poterit regere caſus. Lex illa Civilis ſicut non directe, ſic nec oblique, ut ſimilitudinis ratione, replicatis meis officit, nec aliquibus derogat quæ ſuaſi.

Cap. LI.

Lex ab homine edita non probat Legem Naturæ conſimiliter indicare.

PRETEREA non ut hæc lex Civilis ſtatuunt cunctæ mundi leges de adminiſtratione tutelæ. Nam in Regno Angliæ ſi hereditas, quæ tenetur ſub genere tenuræ (quod ibidem *focagium* nuncupatur, deſcendat impuberi ab aliquo agnatorum ſuorum, non erit hereditas hæc, aut ipſe impubis, ſub cuſtodia alicujus agnatorum ejus, ſed per ipſius cognatos ipſe et hereditas ejus regentur. Et ſi ex parte cognatorum heredis illius hereditas ipſa deſcenderit, tunc pupillus cum hereditate ſua per proximum agnatum et non cognatum ejus cuſtodientur, quouſque ipſe fuerit adultus. Nam leges illæ dicunt, quòd commi tere tutelam infantis illi qui ei eſt proxime ſucceſſurus, eſt quaſi agnum committere lupo ad devorandum. Sed ſi hereditas illa non in ſocagio ſed teneatur per ſervicium militare, tunc per leges terræ illius infans ipſe et hereditas ejus non per agnatos, neque cognatos, ſed per dominum feodi illius cuſtodientur. Quo ſicut in regno illo leges differunt a predicta allegata lege Civili ſuper cuſtodia pupillorum, ſic et veriſimile extat ab eadem differre etiam leges aliarum regionum, maxime earum quæ Imperatori non obtemperant; unde conſtat tutelæ adminiſtrationem non uniformiter in locis omnibus, nec omnia regna ab Lege Civili regulari. Quare ſentire licet legem iſtam a ſolius Imperatoris auctoritate emanaſſe, et non abſolute eſſe juris naturæ ſanccionem, quæ uniformis eſt in regionibus univerſis; quod et verba legis ipſius diligenter conſideranti oſtendunt. Antiquitus namque legiſlatores, dum non eis aut populo placuit legis naturæ procurſus, alias ſæpe quas optabant leges ediderunt; qualiter et conſuetudines introductæ ſunt, ut patet in Canone, Primâ Di. C°. *Omnes leges.* Unde leges omnes ab homine ſtatutas, licet legi naturæ, a qua profiſciſcuntur et quam participare eis neceſſe eſt, ſe directe non opponant, diſcrepare tamen eas a lege illa moderamine quodam non ambigitur; nam non aliæ ipſæ forent ſed eadem lex, ſi non ab ea in aliquo variarentur. Igitur lex pre-

dicta civilis quæ hominis conſtitutio cenſetur, conditionis ſuæ ratione oſtendit aliam eſſe ſuam in caſu quem ipſa diffinit, et aliam ante ejus editionem fuiſſe juris naturæ ſanccionem, quo et ipſa judicat legem naturæ in pupilli tutela non ut ipſa ſed aliter judicare. Quomodo tunc probare poterit lex illa tam diſſimilis, licet filio in vita matris officium tutoris tribuat ratione proximitatis ſanguinis materni, quod conſimiliter regnum diſtribuet Lex Naturæ, cujus ſententiam etiam in tutelæ regimine ab ejus judicio diſcrepare denunciat ipſamet Lex Civilis? Quare nedum non probat lex iſta id quod per eam nepos regis inferre conatur, ſed ejus oppoſitum potius ipſa probare cenſetur. Tamen ne in hiis umbraticis ymaginariis que ſudando, quaſi in nebuloſa die, in invia aberrare deſamemur, lucidum aliquod et ſolidum, ab omni heſitationis caligine ſerenum, ſi quod tale inter leges civiles reperiri poterit quod nepotis tituli veritatem nudam nitidam que reſerare valeat, percunctemur.

Cap. LII.

Leges Civiles prohibent Nepotem ex filia ſuccedere Avo in honore et dignitate.

IN predictarum legum voluminibus copioſe reperitur quod ſtatus, dignitas, et honor, ab agnatis et non cognatis deſcendunt ad herædes; ad quod facit Lex. i. C. De Dignitatibus, et Gloſſa ordinaria ibidem, et Lex *Cum legittime*, ff. De Statu Hominum, cum Gloſſa ibidem. Et qui ſunt agnati et qui cognati docetur Inſtit. De Legittima Agnatorum Tutela, lib. j., ubi ſic ſcribitur, "Agnati ſunt cognati per virilis ſexus cognationem conjuncti, quaſi autem a patre cognati, veluti frater eodem patre natus, fratris filius nepos ve ex eo. At qui per feminini ſexus perſonas cognatione junguntur non ſunt agnati, ſed alias naturali jure cognati." Per quæ clariſſime erudimur quod jure civili a matre nunquam deſcendit filio ſtatus, dignitas, ſive honor, nec ab anteceſſoribus maternis, cum ſint ipſi cognati et non agnati, quo nec ab avo in nepotem ex filia ejus; quod et expreſſe declarat textus in Lege *Liberos*, ff. De Senatoribus, ubi, inter cetera ſic ſcribitur. "Liberos ſenatorum accipere debemus non tantum ſenatoris filios, verum etiam omnes qui progeniti ſunt ex ipſis vel ex liberis eorum, dicantur ſive naturales ſive adoptivi; ſed ſi ex filia ſenatoris ſit, ſpectare debemus patris ejus condicionem." Ad quod etiam facit textus in Lege *Exemplo*, alias *Exemplum* C. De Decurionibus, cum pluribus aliis. Quid tunc apercius nepotis predicti tituli ad avi ſui regnum poterit merita revelare quam jam pandunt leges hæ civiles, quæ nepotem ex filia avo ſuccedere non poſſe in ſtatu dignitate et honore, tam manifeſte declarant? Nam cum regale faſtigium, ſtatus, dignitas, et honor ſit omnium ſtatuum dignitatum et honorum temporalium ſuppremum, dum nepos talis in ſtatu, dignitate, et honore ſuccedere non poſſit avo ſuo, nec in regno eum ei poſſe ſuccedere leges predictæ neceſſario tunc concludunt. Define igitur, Nepos regis, hujuſmodi tituli colore amplius concertare. Legum Civilium imploraſti ſubſidium; ipſæ enim contra te jam judicant, ut ſuperius Legem Naturæ oſtendimus judicaſſe.

Cap. LIII.

Leges Civiles non sinunt mulieres regnare ex causis hic assignatis.

SED ne mater tua, ut tu, Legum Civilium subsidio relevari confidat, quid de ejus titulo, sicut de tuo, leges illæ sancciunt, ut in presenti reminiscor, in medium proferre conabor. Scriptum esse recordor, ff. De Judiciis (l. *Cum prætor*) quod nulla femina potest esse judex, nec judicis fungi officio, sed ab omni judiciali agmine separari debet; idem et canetur C. De Arbitris (l. fin.). Similiter et magistratum gerere non potest; ut ff. De Regulis Juris, l. *Feminæ*, ubi sic dicitur, "Feminæ ab omnibus officiis civilibus et publicis remotæ sunt, et ideo nec judices esse possunt nec magistratum gerere." Preterea feminæ non possunt succedere parentibus suis in honore ubi inest administratio rei publicæ; (ff. de Muneribus et Honoribus l. *Et qui originem*) ac quid sit *honor*, eodem Titulo docetur, (l. *honor*,) videlicet, quod honor est administracio rei publicæ cum gradu dignitatis. Eodem modo etiam honorem diffinit Glossa ordinaria. (C. De Honoribus et Muneribus non continuandis li. x. l. j.) Et quamquam mulieres succedere valeant parentibus suis in honore reverenciali, de quali locutus est Apostolus dum dixerat, "Honore invicem prevenientes:" similiter et Sanctus Petrus dum et ipse dixit, "Omnes honorate," (j. Pe., ij. C°.); quali etiam honore potiuntur omnes nobilium filiæ, quousque ipsæ maritatæ fuerint plebeiis, (ut ff. De Senatoribus l. *Feminæ*;) et qualem honorem maritatæ mulieres jure maritorum suorum nanciscuntur, (ut C. *Qui professione se excusant* li. x. l. fi., ubi textus sic loquitur, "Mulieres honore maritorum erigimus, et genere nobilitamus, et forum ex eorum persona statuimus, et domicilium mutamus; sin autem minoris ordinis virum postea sortitæ sint priore, dignitate privatæ posteriores mariti consequantur condicionem et domicilium;" nam "uxores coruscant radiis maritorum suorum," ut sunt verba textus in Authen. De Consulibus § *Si vero*. Collat. iiij.)—mulieres tamen nunquam ex jure civili succedunt parentibus suis in honoribus in quibus est administracio rei publicæ cum dignitatis gradu, nam talis honoris sexus muliebris non est capax, ut C. De Mulieribus *In quo loco*, et cet. Lege Unica, et ibi expresse in Glossa in verbo "honores," et C. de Nupciis l. *Imperiales*, in Glossa ibidem in verbo "dignitatem." Et quod aliquando datur honor cum administracione et aliquando sine administracione rei publicæ est textus C. *Ut dignitatum ordo servetur*, l. ij. Sed omnis rex nedum judex est, sed et magistratus est, et honore fulget cum dignitate et rei publicæ administracione. Nam quod ipse judex est patet, cum imperium habeat merum et mixtum ac jurisdiccionem. Et ista habere officium est judicis, ut ff. De Jurisdictione omnium Judicum, l. j., juncta Glossa ibidem. Ipse namque habet merum imperium qui gladii habet potestatem animadvertendi in facinorosos; et mixtum habet imperium qui potestatem habet homines mittendi in bonorum possessionem, cum equitas id poposcerit. Similiter et jurisdictionem habet, nam alios judices sub se ipse

conſtituere poteſt. Et quòd iſta ſunt meri et mixti imperii atque juriſdictionis, eſt textus expreſſus, ff. De Juriſdictione Omnium Judicum. l. *Imperium*. Imperator etiam, cui totus olim mundus obtemperaverat, adtunc prout nunc fungebatur officio judicis, ut ff. De Conſtitutionibus Principum l. j., et Cod., eod. tit., l. fin. Et quòd omnis rex magiſtratus ſit, et honore reſplendeat cum adminiſtratione rei publicæ, non expedit legum allegationibus edocere, cum notoria ſint, et quaſi omnes legum libri inde ſint fecundi; tamen quia quid ſit honore fungi ediximus, etiam quid ſit magiſtratum gerere convenit ut dicamus. De hoc vero ff. De Accuſationibus, l. *Qui accuſare*, et preſertim in Gloſſa, ſic dicitur. "Cui eſt commiſſa præ ceteris ſolicitudo ſive adminiſtracio rei publicæ, is magiſtratum gerit." Quare regem, cui præ ceteris ſolicitudo et adminiſtracio hujuſmodi attinet, magiſtratum gerere hæc deſcriptio neminem patitur dubitare. Unde cum rex omnis judex ſit, et magiſtratus etiam honore fungatur cum adminiſtratione rei publicæ, ut docent Leges hæ Civiles, et mulier judex eſſe non poterit, neque magiſtratû aut honore hujuſmodi fungi, ut nos etiam leges illæ eruditunt; ſequitur neceſſario ex eiſdem legibus, quòd mulier non poteſt eſſe Rex neque Regis fungi officio, quo nec regnum aliquod poſſidere. Quare licet nos mulieres ſolum a ſummi regiminis culmine legis naturæ regulis oſtendimus eſſe repulſas, jam, rimatis Civilium Legum ſententiis, invenimus eas nec in ſubjectis regnis poſſe regnare, quo ſeverius multo diſtrictius que a regnandi officio Leges Civiles mulieres repellunt quam eas Legis Naturæ cenſurâ probavimus eſſe repulſas.

Cap. LIV.

Leges Civiles non ſolvunt Queſtionem propoſitam ſed ejus ſolutionem reddunt clariorem.

ET licet in priori Tractatu non aliâ lege humanâ quàm Lege Naturæ litem hanc decidi poſſe diffinitum ſit, alias leges diſcuſſioni ejus ſuffragium præſtare poſſe etiam nos pridie ſumus confeſſi; quod et verum eſſe nunc de facto experimur, dum rationum indagines, quibus veritatem illam quæ lex eſt naturæ penetravimus, leges, quas nunc protulimus, Civiles eſſe ſolidas nec expugnabiles ſuis ſententiis demonſtrarunt; nam contra Legis Naturæ dictamina Leges Civiles nunquam aliquid ſanxcierunt, diverſimodo licet aut aliter aliquando ſtatuerint, ut ſtatuunt ab homine editæ leges quaſi cunctæ. Unde ff. De Juſticia et Jure ſic ſcribitur: "Jus Civile eſt quod neque in totum a Naturali Jure vel Gentium recedit neque per omnia ei ſervit. Itaque cum aliquid addimus vel detrahimus juri communi, jus proprium, id eſt, civile efficimus."

Vide hic quid ſit Jus Civile et unde traxit originem et nomen.

Cap. LV.

Sicut Civiles ſic Canonum Leges Mulieres repellunt a regnandi officio.

SED an Leges Canonum quæ Chriſti Sponſam, Eccleſiam videlicet, regunt, quo et cunctos Fideles regere dinoſcuntur, de mulierum regimine ſanciunt ut Civiles, etiam expedit ut queramus. Scribitur profecto xxxiii. Queſtione v. ſic, "Mulierem conſtat ſubjectam dominio viri eſſe et nullam auctoritatem habere, nec docere poteſt, nec teſtis eſſe, nec fidem dare, nec judicare." Quare dum mulieres, quia judicare nequiunt, nec magiſtratum gerere, neque honore fungi in quo eſt adminiſtracio rei publicæ, Leges Civiles a regali officio repulerunt, ex quo et eas neque judicare neque auctoritatem habere, vel docere, Canones permittunt, conſimili ratione quâ Civiles Leges etiam ipſæ Canones mulieres a regali faſtigio jam repellunt. Ut iſta tamen apercius clariuſque emineant, quid de eiſdem Apoſtolus dicat in medium proferamus.

Cap. LVI.

Apoſtolus probat quæ antea ſanxit Lex Naturæ.

SCRIBITUR vero ad Corinth. 1. xi. C°. ſic; "Omnis viri caput Chriſtus eſt, caput autem mulieris vir, caput vero Chriſti Deus." Quis mulierem ſuppreme regnare non poſſe fortius probare poterit, aut formam noſtræ diſputationis plerumque ſimilitudinibus contextam ratam eſſe clarius edocere, aut ordinem omnium rationabilium creaturarum quæ corpora norunt apercius exprimere, quàm ſanctus hic jam facit Apoſtolus, qui qualiter femina viro, ipſe Chriſto, Chriſtus ut homo Deo Patri ſubordinantur, apertiſſimo nos docet eulogio? "Caput," inquit, "mulieris eſt vir, et caput viri Chriſtus, et Chriſti caput eſt Deus Pater." Obedientiam debuit Chriſtus Deo Patri, cui factus eſt obediens uſque ad mortem. Obedientiam debet vir Chriſto: ſic et mulier viro, ſicut et capiti debet totum corpus hominis. Nam quid eſt hæc methaphora, "Mulieris caput eſt vir," niſi quòd ſicut caput hominis preeſt corpori ſuo, ita et mulieri preeſt vir. Per caput videmus, audimus, odoramus, et guſtamus, a quo, ut dicit Philoſophus, eſt omnis ſenſus et motus, quo non niſi ejus directione quidquam facit corpus quod ſibi extat accommodum vel jocundum; quare capiti ſingula membra obediunt, et ad ejus nutum ſine reviſu moventur. Sic et per virum videt mulier celeſtia et terrena, audit addiſcenda, odorat delectanda, et guſtat omnia quæ pro ſui ſtatus nutrimento expedit deglutiri; quo ſine virilis directionis reſpectu mulier nichil pluſquam corpus ſine capite operaretur. Quare, ut ibidem dicit Apoſtolus, mulier velat caput ſuum, quo oſtendit ſe altius et nobilius quam corporeum habere caput per quod ipſa regeretur; unde eam pudet muliebre caput oſtendere, ne putetur ſe velle illo capite regulari.

Primi namque parentes noſtri pudenda membra ſua cooperuerunt, ne ipſi membrorum illorum inſtinctu, et non rationis motu, concitari ad opus conjugii viderentur. Leges Angliæ mulierem nuptam, non nuptam ſed, coopertam viro nominant. Cooperire caput muliebris pudicitia vult, neſcio quâ energiâ, niſi quod obedientiam quam viro debet mulier Natura eam excitat hoc ſigno quaſi ejuſdem virtutis oſtendere ſacramento; dicente ibidem Apoſtolo, "mulierem non velatam etiam orare Deum nec ipſa natura docet." Unde cum vir ſit mulieris caput, et corpus caput ſuum tranſcendere monſtrum eſſet in natura, mulierem virum tranſcendere qui eſt caput ejus, ita ut per eum nullatenus regeretur, quale eſt ſuppreme regnare, non minus eſſet monſtruoſum in ordine univerſi. Auctoritatem hanc apoſtolicam non ideo in medium proferimus, ut per eam, licet ſola ſufficiat, noſtram in hac parte ſolveremus queſtionem, quam abſolvit lex naturæ, ſed ut ea quæ lex naturæ rationis diſcurſu peregit etiam Apoſtoli auctoritas comprobaret.

Cap. LVII.

Leges Canonum fortius quam Civiles Mulieres repellant a Regno.

SED quia Apoſtolus iſta methaphorice tantùm, quo non palam ſed ſub ſimilitudinis quadam umbra, oſtendit, oportunum eſſe videtur ut, demptâ tenebrarum omnium caligine, ea nobis clarius innoteſcant. Quid igitur inde, nullum proverbium dicens, Apoſtolus ſenſit manifeſte petimus ut revelet. Scripſit vero Apoſtolus ipſe, non omni populo quibus in parabolis datum eſt noſci miſterium Voluntatis Æternæ, ſed doctiſſimo viro Thimotheo Epiſcopo, ſic dicens; "Docere autem mulieri non permitto, necque dominari in virum ſed eſſe in ſilencia" (j. ad Tymoth. ji. C°.). Jam vero aperte quam querimus Apoſtolus detegit veritatem, nec proverbium ullum dicit. Si enim dominari in virum mulierem non permittit, profecto nec ſuper virum ipſe eam patitur tunc regnare, quod ſpecies eſt potiſſima dominandi; prohibito namque genere, omnes ejus ſpecies prohibentur. Et cum negativa confuſe neget et diſtributive, dum mulieri negatur dominandi faſtus, etiam regnandi faſtigium eidem denegatur, cum regnare dominandi ſpecies ſit ſupprema. Quid tunc an mulier ſuper virum regnare valeat alias rimari libet Canonum ſancciones, cum potiſſimus decretorum Doctor, cujus omnes Epiſtolas abſorbuit Canonum pelagus, mulierem ſuper virum regnare non poſſe, jam clariſſime promulgarit. Et, ne ejus ſententiam mulier declinare ſe poſſe putet, Apoſtolus ſententiam illam fulcimentis duobus fortiſſimis communivit, dum docere mulierem non permiſit, ſed eam voluit in ſilencio eſſe. Quis doctor pedagogus ve tam ſedulo docet ut rex, qui et indiſciplinabiles quoſque dignis plectit pœnis? Et quis rege ſilencii magis eſt immunis, dum regnicolarum clamores eum vix ſilere permittunt? Unde dum mulier docere non poterit, nec ſilentium devitare eam permittit Apoſtolus, ipſa nec regnare poterit, et ſi aliter prohibita non fuiſſet. Quare ut Lex Civilis, etiam jam Canonica mulierem regnare

non finit, ſed hæc expreſſius multo fortius que quam illa mulierem a regnandi culmine eliminat. Ut quid tunc, Mater et Fili, lite hâc conamini judicem amplius lacefſire? Uſque veſtrum cauſæ merita rationis diſcurſu detegit lex naturæ; ſententias quas merentur cauſæ illæ leges nedum Civiles, ſed et Canonicæ jam prompſerunt; et judicia quæ in eis auſcultabitis Divina Lex formavit, dum mulierem ſemper ſubeſſe viro ipſa precepit, quo te matrem abdicat a regno, et te filium ejus ne per eam ſuccedas, dum ipſam ſprevit, penitus repulit et ſecluſit. Recordamini igitur, conſulo, Sancti Auguſtini ſententiæ, quâ ſic ait, "Major morbus animorum eſt, poſt rationem plene redditam, quanta homini ab homine debetur, ſemper ad contradictionem niti; ſi talibus reſpondentibus ſemper reſpondere vellemus, non eſſet finis diſputationis." Hæc ille ſecundo libro De Civ. Dei. Quare dum ſingulis quæ in hoc certamine protuliſtis reddita eſt ratio, quanta, ut eſtimo, homini ab homine debetur, ad contradictionem ulterius niti vos conſulo evitare, ne prefignato morbo infiri videamini, nec ſcire diſputationis terminum reperire, reminiſcentes moralis Catonis verſiculi qui ſic canit, "Proximus ille Deo qui ſcit ratione tacere."

Cap. LVIII.

Concluſio diſputationum et modus Judicis ſe ad judicandum diſponentis.

MOX Filia Regis hæc audiens taliter locuta eſt. Non, ut conjicit patruus meus, hiis quæ ego propoſui rationibus ſuis eſſe ſuſpicor ſatisfactum; tamen Judicis noſtri prudentiam, quæ omnium propoſitorum ac totius cauſæ hujus merita perſpicue intuetur, conſiderans, ne gravitatem ejus noſtræ diſputationis tedeat protelatio, ego amodo plus in cauſa iſta replicare non propono. Qualiter et Filius ejus ſe eſſe facturum tunc faſſus eſt, quo et Patruo non relinquebatur materia amplius replicandi. Quare et Judex terminum alium in eodem loco partibus predictis tunc prefixit ad audiendum ſuper premiſſis judicium ſuum et ſententiam diffinitivam; adveniente quo termino, et Judice predicto in loco ſtatuto ſedente, pro tribunali partes predictæ perſonaliter comparuerunt, et quilibet earum inſtanter petiit ſententiam pro ſe reddi. Intervallo deinde non magno Judex ſilens, vultu ad yma dimiſſo, et quaſi ſpiritus ſuos ad interiora recolligens, demum pauliſper oculos erigens modeſto eloquio ſic exorſus eſt.

Cap. LIX.

Judex primo oſtendit quomodo Mulier ſubordinata eſt Viro in ordine Univerſi.

DUM ſummam Dei potentiam, quâ mundi hujus machinam et omnia ejus contenta ex nichilo in eſſe produxit, profundâ mente conſpicimus, Ejuſque ſapientiam, quâ Ipſe tot bona tam pulchra tot ſpeciebus et qualitatibus diverſa quæ mundum replent condidit, eâdem mente rimamur, admiratione non minimâ humiliamur. Sed cum

ejus bonitatem qua Ipſe omnia tali conſtrinxit ordine, ut ad ejus laudem et gloriam, hominis quoque bonum, omnes creaturæ illæ ſingulos motus et curſus ſuos uniformiter dirigant et conſumment cernimus, non minoris admirationis cumulo Deum benedicimus et laudamus. Hoc ordine concordant calida cum frigidis, arida cum humidis, gravia cum levibus, maxima cum minimis, yma cum ſummis. Hoc ordine preeſt angelus angelo, ordo ordini in regno cælorum, homo homini, beſtia beſtiæ, avis avi, et piſcis piſci, in terra, aere, et in mari; ut non ſit repens ymo vermiculus, celſe volans avis, aut profunde natans piſciculus, quem non conſtringit hujus ordinis ſeries conſonantiſſimâ armoniâ. Solum Infernus quem tantum peccatores colunt hujus ordinis amplexus vindicat declinare. Philoſophus etiam (iij. de Cælo et Mundo) dicit, quod ordo eſt propria natura rerum naturalium; et (xi. Methaph.) quod bonum univerſi conſiſtit in ordine. Ordinem vero cum deſerit homo, nepharii ſunt actus ejus, elemoſina vertitur in ypocriſim, votum in abhominationem, oratio in deteſtationem, et jejunium nil niſi pœnam confert jejunanti. Quid ultra? Virtus aut bonum non eſt aliquid quod ordinem non conſervat. Quare Sanctus Auguſtinus virtutem diffiniens, ait, "Virtus ordo eſt amoris," (xv. L. De Civ. Dei.) Unde nec caritas virtutum maxima ordinis evaſit ſeriem, canente Sponſa, "Ordinavit in me Deus caritatem." Et quid eſt iſte ordo niſi parium diſpariumque rerum ſua cuique loca tribuens diſpoſicio? (xviij. Lib. de Civ. Dei.) Sed quis eſt locus ſuperioris niſi ſtatus et gradus quo ſuperior preeſt inferiori; et locus inferioris niſi ſtatus et gradus quo ipſe ſuperiori ſubſiſtit ordine univerſi? Et verum namque eſt quod tot creavit Deus rerum diverſitates quot et creaturas, ut non ſit creatura aliqua quæ non in aliquo differat ab omnibus ceteris creaturis, quo ipſa ceteris illis in aliquo ſuperior ſit aut inferior. Ita ut a ſuppremo angelo uſque ad ejuſdem naturæ infimum excluſive non reperitur angelus, qui ſuperiorem non habeat et inferiorem; nec ab homine uſque ad vermem minimum creatura aliqua quæ non aliæ in aliquo prefit, et aliæ ſubſit creaturæ; ut non remaneat aliquid conditum quod non amplectitur ordinis nexus. Et dum ſic cunctas ordinavit Dominus creaturas, eum genus humanum, quod terrenarum creaturarum ſuppremum fecit, inordinatum reliquiſſe nephas eſt putare. Et cum genus illud per ſexus duos, maſculinum videlicet et femininum, Ipſe geminavit, dum virilem ſexum qui prior conditus eſt, quem et ceteris preeſſe voluit omnibus terrenis creaturis, ſexui ſubordinaſſe muliebri qui in ejus adjutorium conditus eſt, ſuſpicari nequimus, femininum ſexum in creatione ſua maſculino ſexui ſubordinatum fuiſſe neceſſario fateri compellimur. Hic eſt igitur ordo in quo natura humana in ejus inicio conſtituta eſt. Hii gradus viri et mulieris naturales. Hoc ordine virum mulieri preeſſe et eam ſubeſſe viro in eorum creatione eis inditum eſt. Quare et hunc ordinem deſerere, deſerere eſſet ordinem univerſi, quo et peccatum foret, quod ordinis deſertio diffinitur.

Cap. LX.

Qualis tempore innocentiæ fuerat hominis prelatia.

TEGITUR dum gradum invenimus in quo conſtitutus eſt vir ſupra mulierem et ceteras terrenas creaturas in ordine univerſi, qualis tunc erat ſtatus et dignitas ejus in gradu illo ſupra mulierem, neutro eorum in peccatum lapſo, expedit indagare. Non enim tunc prefuit vir mulieri, ut dominus ſervo, judex reo, aut tutor pupillo; nam tempore illo vir non habuit tremendum dominium ſuper mulierem quam Dominus dedit ei in ſociam, nec peccatum aliquod mulieris fuit quod corrigere potuit vir ut judex; et ſi minis aut verberibus mulier ut pupillus artaretur ad virtutem, juſtitiæ meritum non habuiſſet illa ut vir, qui juſticiam tunc coluit non coactus; ſed, ut ſupra memoratur, Sanctus Thomas dicit, quod tempore innocentiæ homo prefuiſſet homini, ut habens officium preeſt non ſervo ſed libero, dirigens eum ad ejuſdem liberi comodum vel commune bonum, quam prelaciam ipſe dominium ibidem appellat. Tamen quia ſtatus humani generis poſt peccatum ita immutatus eſt, ut jam non poſſit reperiri prelatia in terra quæ prelaciæ quam habuit homo ante peccatum recte poterit ſimilari, prelatiam angelorum, quæ peccato mutata non eſt, rimari nos expedit, ut comparatione ejus qualis fuerat hominis prelatia, dum ipſe ut angelus innocentiam ſervavit, certius intelligamus.

Cap. LXI.

Qualiter prelatia viri in terra aſſimilabatur prelatiæ Angeli in celo.

SUPERIORES Angelos dignitatem habere et poteſtatem ſuper inferiores quo eis inferiores obediant et ſubdantur non ambigitur. In Apocalipſi enim ſcribitur, "Pugnabat Michael et omnes angeli ejus cum eo." Subditi fuerunt qui angeli ejus nominantur. Et Danielis x. C°. angelus dixit ad Danielem, "Michael unus de principibus primis venit in adjutorium meum." Ecce nedum poteſtatem adjuvandi Michaelem habuiſſe fatebatur, ſed et dignitatem ſibi et aliis principandi. Nomina etiam ordinum qui Principatus et Poteſtates appellantur nos erudiunt poteſtate et dignitate angelos angelis prefulgere. Sic et Cherubyn qui *plenitudo ſcienciæ* interpretatur, nomine ſuo inſinuat angelos angelis preeſſe ſcientiæ magnitudine, quo inferiores illuminare merentur. Sic et fortitudine angelos angelis preeſſe nomen Gabrielis denunciat, quod *fortitudo Dei* interpretatur. Nomina quoque ceterorum angelorum eos diſtare virtutibus, et in hiis ſuperiores eſſe quoſdam, et prelatiam habere ſuper inferiores nos informant. Similiter et diſtinctiones novem ordinum, quorum quilibet a ſuppremo Seraphyn alteri ſubrogatur. De hiis igitur prolixius diſceptare non expedit, dum angelorum prelatiam quam quærimus iſta ſufficiant revelare. Nam per ea oſtenditur ſuperi-

ores angelos inferioribus preeſſe virtutibus, dignitate, poteſtate, et officio, virtutibus quibus inferiores dirigere poſſunt et illuminare; quo ipſi ſuperiores digni efficiuntur ſuper inferiores habere poteſtatem et officium. Unde inferiores ſuperioribus juſte ſubduntur, et ratione earum dignitatum illos venerantur, et ratione poteſtatum et officiorum eis obediunt, quo Deo obediunt, et in Cælo ordinem ſervant qualem diximus eſſe et in terra. Sic et primus vir preeminebat primæ mulieri virtutibus quibus eam dirigere poterat et docere; quo ipſe dignus efficiebatur habere, et habuit ſuper eam officium et poteſtatem ipſam ad ſui ipſius et eorum commune comodum dirigendi. Et virtutum gratiâ mulieri profuit viro ſubdi, et ſubdebatur, et ratione dignitatis eam decuit virum venerari, et ex cauſa poteſtatis et officii ei debuit obedire; quod faciendo Deo etiam obedivit, et in hoc ſervavit ordinem univerſi, quem ſervare innocentiam fuit colere, et quem deſerere relinquere fuerat equitatem.

Cap. LXII.

Quibus virtutibus Sexus Virilis preeminet Muliebri.

QUIBUS vero virtutibus, aliis quàm in hac diſputatione memorantur, ſexus virilis conditus eſt preeminere ſexui muliebri, quo ex congruo vir ſupra mulierem dignitatem et poteſtatem habuit preſignatas, etiam convenit perſcrutare. Prefuit ſexus virilis muliebri in omni virtute morali, quali mundus regitur, et pax ejus conſervatur. Unde Salomon in Eccleſiaſte, loquens de utroque ſexu, ait, "Virum de mille unum reperi, mulierem ex omnibus non inveni." Invenit vero Salomon mulierem, ut virum, fide, ſpe, et caritate perfectam, devotam, et ſanctam, ſed in moralibus virtutibus non invenit. Mulier, ut vir, innocentiæ tempore prudentiâ non polluit; Eva namque decepta eſt, ſed non eſt deceptus Adam. (j. ad Tymoth. ij. C°.) Quare poſt peccatum Apoſtolus ſtatuit mulierem in ſilentio diſcere cum omni ſubjectione, ſed docere eam non permiſit. Et mulierem viro fortitudine et temperantiâ naturaliter æquiparari non videtur ſentire Eccleſia, cum ipſa, de ſexus muliebris martiribus loquens, dicat, "Etiam in ſexu fragili victoriam contulisti;" quibus verbis ſexum muliebrem a virili ſexu fragilitatis notâ ipſa diſtinguit, ac quaſi mirando datæ fortitudinis gratiæ miraculum. Sapiens videtur mulieris fortitudinem admirari, cum dicat, "Mulierem fortem quis inveniet? Procul et de ultimis finibus pretium ejus." Neque in juſtitia mulieres ut viros graves judicat Eccleſia, ſeu conſtantes, cum eis omnem judiciariam abdicaverit poteſtatem. (triceſima tertia Queſtione v^a. *Mulierem*). Conſimilibus quoque quam plurimis habundat Scriptura, quæ jam compendii gratiâ omittimus, quibus erudimur ut, ſicut hominem minuit Deus paulominus ab angelis, ita et a viro minuit Deus mulierem; quo vir tempore innocentiæ dignus extitit habere poteſtatem et officium eam, ut angelus angelum, dirigendi. Non eſt enim ſexus in animabus, nam ſpiritus maſculi non ſunt aut femellæ; ſolum in corporibus eſt ſexus. Corpora vero virorum mulierum corpora in naturæ donis excedere, nemo ambigit.

Non ſunt enim mulieres, ut viri, viribus robuſtæ, ingenio perſpicaces et naturâ, corporibus agiles, animo audaces, ſeu quâcumque virtute corporeâ præſtantes. Unde conſtat naturam ſexum muliebrem a ſexu viri in donis naturalibus minoraſſe. Et cum ordo ſit parium diſpariumque rerum ſua cuique loca tribuens diſpoſicio, altiorem locum ſexui virili quàm muliebri tribuit naturæ ordo. Quare ſexum muliebrem ſubordinari ſexui virili jure naturæ, quo ei ſubditus eſt in ordine univerſi, neceſſario nos videmus. Et ſi pulciores aſpectui ſint feminæ quam viri, hoc eis nichil confert ſuperioritatis; nam muliebris decor plus viros delectat quam ipſas mulieres, quo ipſæ magis viris quam ſibimet ipſis miniſtrant delicias, et ſerviunt, quemadmodum hominibus ſerviunt herbæ flores delectabiles producentes.

Cap. LXIII.

Prelatia Viri ſuper Mulierem aſſimilatur Prelaciæ Animæ ſuper Carnem, et ſuperioris partis Rationis ſuper inferiorem.

SED quia ſimilitudo angelicæ prelaciæ, quæ celeſtis eſt et remota, diſtare videtur a ſimilitudine prelaciæ viri ſupra mulierem, qui corporibus vigent, vicinius accedere libet, ut hæc innocens humana prelacia, quam oſtendere nitimur, clarius doceatur. Sanctus Gregorius, ſcribens Auguſtino Anglorum Apoſtolo, dicit peccatum ex tribus conſummare, ſuggeſtione, delectatione, et conſenſu. Ut ſicut ſerpens mulieri ſuggeſſit, ipſa delectata eſt, et vir conſenſit, ita et Diaboli ſuggeſtione inchoatur peccatum, delectatione carnis creſcit, ſed animi conſenſu perficitur. Et Magiſter Sententiarum libro ſecundo, eadem affirmans, etiam ſentire videtur, quod ſi Adæ conſenſus mulieris delicto non affuiſſet, originale peccatum conſummatum non fuiſſet. Sanctus quoque Auguſtinus ſuper hoc verbo, "Neque ex voluntate carnis," dicit, quòd mulier debet eſſe ſubjecta viro, ut caro ſpiritui, et ſicut diſſipatur poſſeſſio domus in qua principatur mulier et vir ſubjicitur, ita diſſipatur homo in quo caro dominatur ſpiritui et vires inferiores portioni ſuperiori. Quibus ſententiis viri ſupra mulierem, ſicut rationis ſuper ſenſualitatem, vel animæ ſuper carnem, prelatias poſſe aſſimilari videtur. Sed Magiſter ipſe nedum libro predicto, ſed et ſuper Pauli Epiſtolam primam ad Corinth. xi. C°. hæc tractans, aſſimilare videtur rationis ſuperiorem partem viro, et inferiorem mulieri. Ut ſicut pars illa ſuperior Deo adherens, et in id quod eternum eſt ſe extendens, incommutabilem contemplando veritatem, cenſetur ad ymaginem Dei facta; cui non erat bonum eſſe ſolum; quare factum eſt ei adjutorium ſimile ſibi, videlicet pars inferior rationis, temporalium rerum curam gerens, quæ nec ut mulier dici poterit ymago Dei, ſed ſicut mulier viri gloria, etiam ipſa gloria meretur dici ſuperioris partis mentis, dum ei ſubditur et obedit; unde hæc prelatia ſuperioris partis rationis ſimillima videtur eſſe prelatiæ quam tempore innocentiæ vir habuit ſupra mulierem, et vere ſimillima, cum, ut dicit Apoſtolus, "non vir propter mulierem creatus ſit, ſed mulier propter virum, nec vir ex

muliere ſed mulier ex viro;" ſic pars inferior rationis propter ſuperiorem, et ex ea; ut non ſit actus hominum bonus qui non ex ſuperiori parte prodeat rationis, et fiat propter eam; et ſicut vir et mulier ſunt duo in carne una, ita ſuperior pars et inferior rationis duo ſunt in anima una. Prefuit homo macrocoſmo, preeſt microcoſmo ſuperior pars rationis. De hac parte locutus eſt Apoſtolus cum dixerat, "Renovamini ſpiritu mentis veſtræ," et alibi, "Induite novum hominem qui renovatur in agnitione Dei ſecundùm ymaginem Ejus qui creavit eum." Nam, ut ſupra memoratur, dicit Magiſter predictus ſuper Epiſtolam prenotatam, "Nulli dubium hominem eſſe factum ad ymaginem Dei, non ſecundùm corpus neque ſecundùm quamlibet animæ partem, ſed ſecundùm rationalem mentem, ubi poteſt eſſe agnitio Dei, quæ ſit in ſuperiori parte rationis. Et non eſt ymago Dei niſi quod inheret incommutabili veritati. Hæc mens propter carnis conjunctionem, quâ ipſa et caro ſunt unus homo, dicitur homo ad ymaginem Dei factus." Hæc ille. Quid tunc ſimilius poteſt eſſe viro quàm iſta pars ſupprema mentis, quæ, carni juncta, etiam homo vocari meretur? Et quid mulieri ſimilius quàm inferior pars rationis, quæ a ſuperiori in ejus auxilium facta eſt, cum ea mens una, ut Eva ex Adam in adjutorium facta cum eo erat caro una. Nec huic obeſt quòd mulier ſine viro mortaliter peccare poteſt, etiam eo contradicente, quod non poteſt caro ſine anima, cum viro et mulieri duæ ſint animæ rationales in quibus ipſi diſcreta habent arbitria. Quare de illis ait Dominus, "Erunt duo in lecto uno, unus aſſumetur et alius relinquetur." Sed non ita eſſe poteſt de anima, quæ unica eſt in carne et in partibus rationis, ut nec illa ſine ipſis, aut ipſe ſine illa dampnari poſſint. Sed inter res ſimilimas neceſſario quædam aſſunt diverſitates, quia non ſimile, ſed idem eſt, quod in nullo eſt diverſum.

Cap. LXIV.

Prelatias prenotatas hic combinat Scriptor.

PREEMINET inferiori parti mentis pars ſuperior virtutibus theologicis, quo digna eſt pars illa poteſtatem habere ſuper inferiorem, et eam regendi officium. Quare ratione dignitatis meretur ab inferiori venerari, et ratione poteſtatis et officii inferior ſuperiori eſt obnoxia obedire; unde merito ſubjecta eſt pars inferior ſuperiori, et ſibi debet obedientiam et honorem. Non enim ſide pollet pars inferior, ut ſupprema quæ incommutabilem veritatem indefeſſe contemplando haurit inde fidei veritatem, quam preſcit pars inferior, niſi quatenus eam ſibi revelaverit pars ſupprema. Spe etiam præpollet hæc pars ſuperior, quæ alas ſuas terrenis non maduit undis, quo ad cœlum properans evolat gaudens ſe neſcire repulſam; ut de ea dici poterit, "Quæ eſt iſta quæ aſcendit per deſertum deliciis affluens, innixa ſuper dilectum ſuum?" (Canticorum ultimo.) Hæc etiam pars, ut Seraphyn Deo adherens, ſuaviſſimo ardet amore, de qua dicit Apoſtolus, "Qui adheret Deo fit unus ſpiritus cum eo." (i. Cor. vj.) Sed hiis humanis non eget hæc pars ſuperior extolli præconiis,

aut ſupra partem quæ agibilibus intendit laudibus hominum præferri, cum de Maria ſecundùm eam vivere eligente dixerit Veritas Summa, " Maria optimam partem elegit." Unde ſicut virum mulierem virtutibus moralibus et donis naturæ excedere ſuperius oſtendimus, quo digne ſuper eam poteſtatem habuit ipſam dirigendi, ita et hæc pars ſuperior rationis fide, ſpe, et caritate prefulgens, digna eſt ſuper inferiorem, quæ non niſi per eam hiis virtutibus lucet, habere prelatiam, poteſtatem, et officium ipſam dirigendi pariter et regendi. Reſultat jam ex preſcriptis hæc veritas ſolidiſſima, quòd tempore humanæ innocentiæ talis erat ſupra mulierem viri prelatia qualis jam eſt ſuperioris angeli in cælo ſuper ſibi proxime inferiorem, et qualis in terra eſt prelatia animæ ſuper carnem, rationis ſuper ſenſualitatem, et ſuperioris partis rationis ſuper ejuſdem rationis inferiorem. Quare, ſicut inferior angelus non poteſt ſe erigere ſuper ſibi ſuperiorem, nec ſenſualitatis natura regere rationem, neque rationis inferior pars ejus poteſt ſuperiori dominari; ſic nec mulier ſuper virum ſe poteſt elevare, ſeu eum naturæ lege ſuppreme regere, aut ſibi ſumme quomodolibet principari. Et per conſequens nec regale faſtigium quod ſuperiorem neſcit poteſt mulier aſſumere, aut inde capax eſt, cum eam a dignitatis illius culmine alienaverit natura, ſexum quoque ejus excluſerit cenſura juris. Hæc argumenta a ſimilibus fortiſſima ſunt in jure, cum juris regula concinat quòd de ſimilibus ſimile eſt judicium.

Cap. LXV.

Prelatia ſociali vitæ non repugnat.

TAM diverſis ſimilitudinibus oſtendimus qualis erat et eſt jure naturæ prelatia viri ſuper mulierem. Et ſuperius oſtendimus eandem habuiſſe virum ſuper mulierem prelatiam tempore eorum innocentiæ, licet eorum vita tunc fuerat tantùm ſocialis; (quia non dum dixerat Dominus mulieri, " Eris ſub poteſtate viri et ipſe dominabitur tui;" ſed ante illam Dei ſententiam dixerat Adam Domino, cum ei de crimine ſuo alloqueretur, " Mulier quam dediſti michi ſociam dedit michi de ligno et commedi;" quibus verbis ipſe oſtendit mulierem fuiſſe datam viro in ſociam et non in ancillam,) tamen in illa ſociali vita mulierem fuiſſe ſubditam viro, ipſumque ſuper eam habuiſſe prelatiam, rationis diſcurſu eſt ſuperius revelatum; ſocialis etenim eſt vita civium ſupremorum, ad quorum ſocietatem deprecatur Eccleſia nos venire; ſocialis eſt vita animæ cum corpore, et rationis partis ſuperioris cum inferiori; tamen in hiis omnibus non deeſt eſſe prelacia, quia, ut ſuperiori Tractatu oſtenditur, prelacia ſocietatem roborat et non disjungit. Quare cum Lex Naturæ ſit Juſtitiæ Veritas quæ rectâ ratione poterit revelari, Lege Naturæ jam eſt oſtenſum mulierem viro naturaliter eſſe ſubjectam, et virum ſuper eam habere prelaciam.

Cap. LXVI.

Eccleſia per Mulierem prefigurata probat Mulieris ſubjectionem Viro.

PRETEREA prima mulier ab Adæ dormientis latere producta Eccleſiam a ſecundi Adæ in cruce dormituri latere producendam figurabat. Sed mulier illa, ſic a viro producta, Sanctæ Eccleſiæ figura non fuiſſet, ſi ipſa viro, ut Eccleſia Chriſto, ſubdita non fuiſſet. Non enim leo aut cruenta beſtia mitiſſimi Jeſu, Deo Patri immolandi, typus fuerat; ſed agnus, animalium mitiſſimum ut Ipſe fuit hominum, Ipſum typice preſignavit. Quid eſt figura niſi futurorum reale prefagium, ſicut propheſia eſt vocale? Unde ſimilitudinibus, ut propheciæ verbis, figuræ loquuntur. Quare quod futuro omnino erat diſſimile, ejus nullatenus potuit fuiſſe figura. Primorum namque parentum matrimonium Chriſti et Eccleſiæ conjugii non fuiſſet ſacramentum, ſi prima conjunx Adæ, ut Eccleſia Chriſto, obedientiam non debuit in ordine ſuo. Obedientiam igitur debuit prima mulier viro, ut Eccleſia Chriſto, talem ſed non tantam; nam qualitatem plus quam quantitatem ſolent ſimilitudines demonſtrare.

Cap. LXVII.

Nepotis titulus antea efficaciter improbatur.

EA vero quæ tam induſtrioſe peroravit Nepos Regis, quibus ratione matris ſuæ optinere ſperat Regnum quod petitur, licet ipſa inde omni jure penitus ſit excluſa, tot inevitabilibus reprehenduntur argumentis, ut non diſputatione egeant ampliori. Quare id ſolum reſtat ut quid in hac cauſa ſancciemus partes auſcultent.

Cap. LXVIII.

Materia induſtiva ad Judicium.

AURI metallorum eximii, licet obſiſi, puritas ignoratur, donec candentis camini illud probetur examine. Campanarum conſonantiam non novit earum artifex antequam pulſentur, nec cordarum cithereda concordiam, quouſque ut altiſſoni ita et ſubſonantis ipſe ſenſerit ſonum. Quis ſine examine tantæ cauſæ merita poterit contempiari, aut, non auditis partium rationibus, ejus enucleare valuit abſconditam veritatem? Decepit patriarchiam Iſaac veſtimentorum filii fragrantia, decepit et eum tactus ſenſuum ampliſſimus; non caligantem eum juvavit viſus; nec guſtus edulium quod attulit filius minor venationem non eſſe fratris ſenioris decrevit. Solus auditus erat ſenſus ille qui non fefellit ſenem. Hic

ſenſus ſubplantatorem eſſe perſpicue deprehendit filium, patre ſubdole connivente. Auditu, ut dicit Apoſtolus, addiſcitur fides noſtræ religionis fundamentum. Verum et ex auditu profundiſſimarum ſententiarum et rationum, quas in hoc examine partes predictæ profuderun , nos jam hauſimus quam querit propoſita queſtio veritatem ; quæ etſi in potentia nobis ſemper affuerit, non ſe palam exhibuit, donec argumentorum viribus agitata, quaſi a ſompno gravi fuerat excitata. Harum tamen expergefacta clamore, ſe jam nobis nudam nitidamque revelat, quo non amplius eſt nobis amodo pro ejus inveſtigatione ſudandum : ſed eam potius judicii prolatione jam fore ſentimus cunctis poſteris promulgandam. Quare dum in cauſa hac tam mature ventilata, ex mutuo partium predictarum aſſenſu, concluſum eſt, ulterioribus quoque allegacionibus renunciatum, Nos ad Judicium in eadem reddendum procedimus in hunc modum.

Cap. LXIX.

Judicium.

IN Dei Nomine, Amen. Quia Affiriorum Rex, ſuperiorem in temporalibus non recognoſcens, filiis orbatus in fata deceſſit, Filiam ſolam, et Fratrem, necnon de illa illa Nepotem poſt ſe relinquens, qui omnes ſuper jure regni ejus ſe noſtri arbitrio ſententiæ et decreto ſubmiſerunt ; nos deliberatione maturâ, auditis eorum allegationibus et reſponſis, necnon rationibus ſuperinde, et quæ fecerunt argumentis, dum, nedum ex eis, verum etiam ex hiis quæ nos jam pandimus, certiſſime comperimus, et nobis conſtat incunctanter quòd femina non eſt capax regni ſuperiori non ſubjecti ; quo nec filius ejus naturæ lege in regno hujuſcemodi ſuccedere poteſt matris ſuæ ratione ; judicamus, arbitramur, et noſtrâ ſententiâ diffinitivâ decernimus, Fratrem predictum jus habere ad regnum et in regno quod petitur, ſucceſſionis titulo ut hæres defuncti Regis olim fratris ſui. Quare et eum de, et in plena, ac pacifica Regni illius poſſeſſione inveſtiri jubemus ; predictos Filiam et Nepotem inde omnino excludentes, quos omnis juris et tituli ad regnum illud expertes eſſe, declaramus ſimiliter et immunes.

Cap. LXX.

Hic Auctor remittit Opus ſuum examinationi Summi Pontificis.

TAM ſi pretractata firme inexpugnabiliterque ſint concluſa, ſopitus eſt fomes ille maliciæ quo inter reges bella tam ſedulo hucuſque ſuſcitata ſunt ; error videlicet inveteratus, quo feminæ, earum que heredes per eas, in regnis ſuppreme ſuccedere poſſe arbitratæ ſunt. Hic erat ſerpens ipſe verſutus ambitionis veneno educatus, qui animos principum ſurrepens eas tantâ virûs ſui malicià venenavit, ut vix eſſet regum aliquis qui non,

tumoris inde exuberantis vehementiâ concitatus, ad armorum fremitum ſe contulit, quo veneni hujus ardorem ſe ſedare poſſe credebat. Sic pax hominum undique turbata eſt in terra, ſic et Eccleſiæ robur attenuatum eſt, ut vix reperiri poſſet Princeps qui non tantis bellorum diſcriminibus prepeditus ſe poſſet deffencioni Eccleſiæ conferre; quo erga eam aggravata eſt manus inimicorum ejus, ita ut nedum barbarorum et infidelium blaſphemiis et contumeliis, ſed et propriorum filiorum laceſſita injuriis, conſolantem non invenerit ex omnibus caris ejus. Et ſi ſupradicti erroris iniquitas diutius invaleſcat, non dubium majora hiis incomoda ſuſtinebit Eccleſia, a nullo fere Principum defenſata. Proficiſcere igitur hujus Tractatus Libellule, et concito Urbem pete, ubi ad pedes Vicarii Chriſti, Eccleſiæ Sponſi, provolutus, humillime ora ut te oculis ſuæ pietatis dignetur aſpicere; et, ſi te rectum juſtum que reperierit, hoc omnibus ejuſdem Eccleſiæ filiis intimare dignetur; et, ſi quid in te devium conſpexerit, quod abſit, hoc ſuæ lenitatis correctione reſcindat, cum non illud de malitia, ſed ex ignorantiæ ſolum nebulis ſit dilapſum. Ad eum namque, ut in priori Tractatu mentoratur, remittit Moyſes omne judicium difficile et ambiguum quod eſſe poſſit in Curiis hominum, volens ut quidquid ipſe judicaverit docuerit ve juxta Legem Dei, hoc judicent omnes filii hominum, ejus ſententiam ſequentes, nec declinent ad dexteram vel ad ſiniſtram. (Deutron. xvij. C°.)

Cap. LXXI.

Conſuetudo nequit hereditare Mulierem in Regno quod ſuperius neſcit.

NEC beatiſſimi Patris movere poterit Sanctitatem, quod feminas, quandoque etiam et viros titulorum colore feminarum, ipſa conſpexerit regali ſolio conſedere. Nam ſi hîc tractata errore careant, licet femina principare preſumpſerit, diademate, ceteris quoque omnibus inſigniis regalibus redimita, ac ut Rex verſetur in regno ſuperius neſciente, ipſa tamen regis non potitur officio, neque regno illo tali medio inveſtitur, cum non ſit inde capax muliebris ſexus. Virum quoque mulieris titulo regnum hujuſmodi obtinere non poſſe in hoc Tractatu ſolidiſſime eſt concluſum. Quo mulierem pariter et virum regna taliter uſurpantes injuſte agere, quo et peccare, lata hîc ſententia, ſi recta ipſa fuerit, neminem patitur heſitare. Quid tunc juris conferre poterit mulieribus aut viris hujuſmodi uſus vel conſuetudo longeva, quæ non niſi in peccatorum aggere inolevit? Num poterit ipſa peccatum in virtutem transferre aut in fas nefas commutare? Iteratum facinus profundius ledit quàm quod primitus eſt commiſſum. Uſus igitur reatum aggravat, ſed nequit delere peccatum. Unde ſolum bonæ fidei poſſeſſor eſt qui preſcriptione jus adquirit, dicente Juris Regulâ, "Poſſeſſor malæ fidei ullo tempore non præſcribit;" et alia, "Non firmatur tractu temporis quod de jure a principio ſubſiſtit." Quare conſuetudo non aliquid transformat in legem, niſi quod originem ſortiri poterit juſtam. Et nonne in Tractatu iſto probatum eſt, muliebre regimen

ſuper homines ſuppremum non eſſe de natura entis, quo nec de natura rerum. Quomodo tunc in uſum vergere poterit quod omnino non eſt? An poterit plebeius in regis perſonatum ſe transformans in comediis, et ſi anteceſſores ſui conſimiliter fecerint a tempore longiſſimo, per hoc in regia preſcribere dignitate? Reverâ ut perſonatus in comediis, apparenciam habens, et realiter non exiſtens, eſt mulieris imperium ſuppremum ſuper virum. Inter antiquos ſi quidem ydolatria ritu celeberrimo colebatur, quam et conſuetudo inter eos ita ut legem extulit, ut ſpernentes eam, nedum ut in lege committentes, ſed et ut blasfemos, rectores orbis perimebant; quid tamen hoc ſcelere ſceleſtius et remotius a lege? Ydolatriam jam Eccleſiæ ſanctitas, ejus quoque induſtria et doctrina, quaſi ab omnibus mundi finibus effugavit. Utinam et ipſa erroris qui hic deprehenditur maliciam eliminaverit ab omnibus finibus ſuis! Ydolatria Eccleſiam de foris laceſſivit forinſeco bello. Error iſte eam interius diſſipat et infirmat bello inteſtino, qualiter hucuſque non gravavit eam peccatum aliud quod unquam a Chriſtianis erupit. Quare ſicut ejus iniquitas Eccleſiam maxime læſit, ſic ejus evacuationem maximum conferre Eccleſiæ relevamen poſſe, non ambigitur. Eija ergo Pater Sancte, et huic Eccleſiæ languori adhibe medelam, ut ſicut ſanctis predeceſſoribus tuis, qui ydolatriam debellarunt, Sanctitas tua ſuccedit in auctoritate et honore, ita et in hoc genus demonii ejiciendo eis ſuccedat in vitæ meritis et laude perhenni. Ad cujus rei preſagium eſtimabit Beatitudo tua tibi hucuſque reſervari hujus infirmitatis curam, cui vix ſimile virus aliquem predeceſſorum tuorum legitur in Eccleſia extinxiſſe; quo Sanctitas tua, quæ quaſi ſero venit in hanc culturam vineæ Dominicæ, tantam promerebitur mercedem quantam meruit qui primo mane eam colere eſt conductus.

FINIS.

FORTESCUE

DE NATURA LEGIS NATURÆ.

TRANSLATED FROM THE LATIN BY

THE RIGHT HON. CHICHESTER FORTESCUE, M.P.

LATE STUDENT OF CHRIST CHURCH.

A

TREATISE CONCERNING THE NATURE OF THE LAW OF NATURE, AND ITS JUDGMENT UPON THE SUCCESSION TO SOVEREIGN KINGDOMS.

INTRODUCTION.

Here follows a ſort of Summary of the Contents of the following Book.

THIS ſmall book is divided into two Parts, in the firſt of which a queſtion is propoſed concerning the right of ſucceſſion in ſupreme kingdoms; and it is ſhown how that that queſtion cannot be reſolved by any other human law than the Law of Nature only.

Next, the Author inquires what that Law of Nature is, and he finds it demonſtrated not only out of the ſacred Canons, but alſo in the Goſpel.

He finds alſo a long period of time during which in things temporal the world was governed by that law only, laws of cuſtom and ſtatute not having been yet produced, nor the Moſaic law yet promulgated.

And he tells what the ſacred Canons ſay, that the law of nature is a Divine law, and how it took riſe from the firſt beginning of human nature, and endures unchangeable; and how all other human laws follow in the train of that law, and how under it and by it the kingly dignity firſt ſtarted into exiſtence, ever after regulated by the ſame.

And then he ſhows who was the firſt king, whom, as well as many other kings, as he recites, of whom ſome were juſt, ſome unjuſt, he proves to have reigned under the law and by the law of nature.

Then the Author oppoſes to the excellency of the law of nature diſplayed in the rights of a king that which the prophet Samuel by God's command predicted to the people of Iſrael; and againſt the goodneſs of the kingly dignity he brings forward by way of object on the penitence of that people, when they ſaid, "We have added an evil thing to all our ſins, by aſking a king over us."

And, in diſcuſſing theſe objections, he treats incidentally of government political and royal, and alſo of government merely royal.

And in the ſame Treatiſe he proves that neither of theſe is more potent than the other; but, although under good princes they may be equal, he yet affirms that under unjuſt princes the political and royal government is leſs capable of doing injury to its ſubjects; and in the courſe of this contraſt he proves among other things that by the law of nature contracts were formed among men and kingdoms eſtabliſhed in the world long before the Law of Nations began to exiſt: and he proves that, although the ſtate of man had been changed by ſin, yet the law of nature has ever endured the ſame, and ſtill endures, although in a different ſtate of grace.

Next he lays down the difference between *Jus* and *Lex*, and then defines the law of nature, and at no ſmall length ſhows when and how it took its origin and its name. And afterwards he ſtates that the law of nature and natural juſtice are of one eſſence, although accidentally ſo, and, among other things, that that law is derived from juſtice, as brightneſs from light, flame from fire: and he ſets forth many ſuch ſimilitudes; and ſhows how juſtice remained in man after man had abandoned her.

And next he ſhows how this juſtice differs from original juſtice, and aſſerts that there were not two kinds of juſtice created, but one only.

And then he ſhows why the Law of Nature is Divine, alſo why it is called the daughter of the Divine law; and among other things he ſays that that law is related to the eternal law as the moon is to the ſun, which hath her light only from him. And moreover he ſays that he who takes human law out of the world is as one who would rob the ſky of the adornment of moon and ſtars. Very many other matters alſo, not leſs clouded over than theſe, he makes clear, which we leave for the reader.

Finally, he ſhows what are the bounds of Divine law and of human law; and in what ſubjection human law ſubmitteth itſelf to the law Divine; and he proves by ſacred authority that every doubtful matter in human courts of juſtice ought to be referred to the judgment of the Supreme Pontiff. And in concluſion, he ſays that the law of nature bereft of the ſafeguard of original juſtice was never ſufficient, nor is now ſufficient, to juſtify man for his actions without Grace, ſo as that by the merits of that law he ſhould be able to deſerve eternal life. Very many other things alſo, which reveal the ſacred myſteries of the Law of Nature, are unfolded in this Firſt Part, ſo that they will lie open to him who reads it through; wherefore the Author would have this Part called *A Treatiſe concerning the Nature of the Law of Nature*.

In the Second Part of this book the Author firſt conſtitutes a judge in the caſe of the queſtion propoſed, before whom the ſaid queſtion is argued by three competitors contending for a certain kingdom which acknowledges no power above it, by means of arguments flowing out of the boſom of the Law of Nature; though the Author ſhows, by ſome other authorities, that thoſe arguments only are right by which a woman is proved incapable of ſucceeding to the kingdom in diſpute, or to any one of like kind. And then he proves that

concluſion to be right, not only by the Law Divine, but alſo by the Canon and Civil Law. In like manner he proves that the children cannot enjoy ſuch a kingdom in right of their mother, or by reaſon of deſcent through her. Wherefore the Daughter of the king who died ſeized of the kingdom aforeſaid, and in the ſame way his Grandſon by her, two of the ſaid contending parties, are by the judgment of the above-mentioned judge excluded from the kingdom which they fought, and it is adjudged by definitive ſentence to the Brother of the king.

Laſtly, it is ſhown why neither cuſtom nor preſcription can have any force or place against the effect of this ſentence.

This Second Part the ſaid Author wiſhes to be called *A Treatiſe concerning the right of Succeſſion in Sovereign Kingdoms*, in which Part the reader, if he reads it laborioufly, will find not a few things which, before it was put forth, were hidden, as it were in ſhades of darkneſs, from moſt men's eyes.

FIRST PART.

CONCERNING THE NATURE OF THE LAW OF NATURE.

A KING, acknowledging no ſuperior in things temporal, has a daughter and a brother; the daughter bears a ſon. The King dies without ſons. The queſtion is, whether the kingdom of the King ſo deceaſed deſcends to the Daughter, the Daughter's Son, or the Brother of the King.

Chap. I.

Here the Author ſhows the motive of his Work.

THIS queſtion, although it be propoſed in few words, can be reſolved, it is believed, by no ſmall diſcourſe, ſeeing that it inquires into rights belonging to the higheſt ſummit, the higheſt potency, and the thing which the human mind deſires above all things on earth; even as the Philoſopher ſays, "We deſire everything, but moſt of all to be firſt." An angel coveted exaltation; ſo did the firſt created of men, whereby he hath ſo diffuſed the luſt of domination throughout all his progeny, that hardly can a man be found whom the ambition of dignities hath not infected.

Oh, then, what a pious and holy thing it would be to reveal the truth which here is ſought, ſtripped of every veil of error, naked and ſhining! ſeeing that under the cloud of this ignorance ſo many hard-fought wars, ſo many civil conteſts, pervading the whole world, have prevailed, not only in the moſt noble kingdoms of France and England, but in very many other regions alſo, where the bloody ſword, accompanied only by the juſtice of this truth, has devoured thouſands upon thouſands of men. This truth, therefore, if it can be made plain by a definition beyond doubt, will, by the guidance of God, appeaſe wars not a few already begun, and will withdraw material for the beginning of the like hereafter; whereby will ariſe a firmer peace between kingdoms, and the Church, for this long time weakened by the effects of ſuch wars, growing in ſtrength beyond her wont, will more ſtoutly than ever do battle with her enemies. Wherefore, although the purſuit of this truth may not be meted by the knowledge of him who propoſes the queſtion of which you have now had the

firſt taſte, he, nevertheleſs, inflamed by the deſire of ſo great a good, recalling that ſentence of the great moraliſt Seneca, when he ſays, "I have ſeen nothing wonderful in the world except the ſoul, to which, being ſo great, nothing is great," truſting in God's aid, whoſe grace, humbly prayed for, never failed any man in time of need, ſets himſelf to this work, though it be a great one, in the following faſhion.

Chap. II.

Although this be a queſtion of Law, the Author refuſes not the aid of other Faculties.

SEEING that the above queſtion is one of law only, its ſolution requires not the judgment of many or difficult ſciences. The laws only can determine it. What ſick man ſeeking to be healed conſults the mathematicians, ſeeing it is phyſic only which knoweth to cure diſeaſes? or what agriculturiſt deſiring to ſow the ground looks for the opinion of philoſophers? for his mechanic art can teach him knowledge enough of the matter. Nevertheleſs natural philoſophy inveſtigates the nature of ſeeds and of tillage more ſubtly than doth the art of the huſbandman; and the aſtronomer knows more ſurely than the phyſician the courſes of the planets under which the ſick man can be hurt or healed. By the help of theſe, therefore, if they conſult them, the ſick man and the mechanic will be able more ſurely to accompliſh thoſe things which they deſign. Even ſo the laws, to which alone the treatment of our preſent caſe is left, if they be ſupported by the aid of the other ſciences, will be able to deal with this diſpute more ſurely, and with ampler authority, ſince there are no faculties which are not ſubſidiary in ſome direction or other to other arts. Let us, therefore, ſo ſeek the ſentence of the laws in this diſpute, as not to refuſe the ſupport of other faculties. And firſt let us inquire what law is capable of determining it.

Chap. III.

The ſolution of this queſtion calls for a law other than the Canon or the Civil.

ALTHOUGH the Imperial Laws, which bind in the ſtrongeſt manner the ſubjects of the Emperors, are capable of unfolding and illuſtrating the merits of this caſe in a clear and beautiful faſhion, yet they do not ſeem able to decide it abſolutely by their own authority, foraſmuch as the parties contend for the ſucceſſion to a kingdom, which is under no ſubjection whatever to Cæſar's ſway. Although, again, the ſacred Canons are richly ſtored with ſentences which might unlock the merits of the caſe; yet Chriſt's Spouſe the Church, becauſe, looking to heavenly things, intent upon matters of higher reſearch, namely, ſpiritual matters, like to a mother of a family full of domeſtic cares, ſhe is

not wont to entangle herſelf with things out of doors, hath hitherto given no pains to the diſcuſſion of this earthly buſineſs. We are compelled, therefore, in this matter to inquire after the deciſion of another law; to do which we chooſe this manner of proceeding which follows.

CHAP. IV.

The Law of Nature alone governed the World until the Law given by the hand of Moſes.

THE human race, from the time when it went out from Paradiſe, even until the people of Iſrael received by the hand of Moſes at Mount Sinai the law written by the Lord, was governed by the law of Nature; during which time more than 3644 years elapſed, as may be collected from the writings of St. Auguſtine in the 15th and 16th books of the De Civitate Dei; and nearly in like manner counts Joſephus in his book Concerning the Hiſtory of Antiquities, according to whom all that period is called the time of the Law of Nature. And although the ſucceeding period to the coming of Chriſt be named the time of the Law, and the whole period from then until now the time of Grace, nevertheleſs the law of nature itſelf was not in thoſe ſucceeding times aboliſhed, but continued through them all, and ſtill continues in its own force and effect. The Lord alſo confirmed it, and enjoined it to be obſerved, ſaying, "All things whatſoever ye would that men ſhould do to you, do ye even ſo to them; for this is the law and the prophets" (Matt. vii.); and the law which the Lord thus declared and commanded men to keep the Canons expreſſly declare to be the law of nature, when they thus ſpeak, "Natural law (*jus*) is that which is contained in the Law and the Goſpel, according to which every man is commanded to do unto another what he would have done unto himſelf, and is forbidden to inflict what he would not have done unto himſelf:" for although theſe words of prohibition be not expreſſly uſed in the Goſpel, yet are they tacitly included there, ſince when one of two contraries is commanded the other is neceſſarily forbidden. Nor is it any marvel that this law, although it was enough to rule the world in civility, is expounded in the Goſpel in ſuch few words, ſince upon the two greateſt commandments, alſo repeated in few words, the Lord ſays that all the Law and the Prophets hang; and, in ſtill fewer words, the Apoſtle, embracing all theſe things, ſays that "Love is the fulfilling of the law."

CHAP. V.

The Law of Nature excels all other human laws.

THIS Law of Nature all the laws of the Old and New Teſtament approved, diminiſhing nothing therefrom; nay, the Lord ſays of it, as of the reſt of his law, "I came not to deſtroy the law, but to fulfil." And whatever other laws there are, called human, they are either by this law eſtabliſhed, or by its authority, as ſup-

plementary to it, they ſubſiſt. For laws put forth by man are all either Cuſtoms or Statutes, as all that crowd of laws which in the Laws of the Emperors are recited under ſo many names, ſuch as the *placita* of princes, *ſenatûs conſulta*, *plebiſcita*, and ſimilar laws of civilians, of the army, of the navy, of trade, and the like; inaſmuch as all theſe have been created by cuſtom or conſtitution of man; concerning the excellence of which, and the dignity of this law, the ſacred Canons inſtruct us in theſe words: "Now in dignity, the law of nature is ſuperior to cuſtom and ſtatute; for what things ſoever are either recorded in cuſtoms or comprehended in writings, if they be adverſe to natural law, are to be held null and void" (viii. Di. Co. *Quo jure*); and not only does all that Diſtinction ſupport the ſame opinion, but all the ſubſequent Diſtinction, viz. the ninth, ſupports it alſo. Moreover, in the fifth Diſtinction, firſt chapter, we have it thus concerning this law; "Now let us return to the difference between natural law and the reſt. The law of nature holds the firſt place in time and dignity among all; for it begins from the beginning of the rational creation, and varies not by time, but abides immutable." And upon this text there is an approving Gloſs, which ſays, "If anything be contrary to natural right, that thing is wrong, ſince as againſt the law of nature there is no diſpenſation," adding that "that law is natural equity."

To this law of nature are auxiliary all ſuch Imperial laws as are commonly called Civil; and all rights of kings alſo, if they comprehend anything beyond ſtatute and cuſtom (which, as is here ſhown, are ſubject to this law), have got it as it were on loan, not from the prince's authority, but ſolely from the force of this law, which proclaims itſelf common to all the powers of the world. Oh, how great, and to be extolled with all praiſe, is that Law of Nature, to which all human laws are obedient, which even the Canons, I will not ſay as I ſaid above, extol, but declare to be a law Divine! And of a truth it is Divine; for, as St. Thomas ſays, it is nothing elſe than the participation of eternal law in a rational creature; under it the power of kings took its beginning; by its authority and force alſo all juſt kings have reigned and do reign. Notwithſtanding, leſt the Writer ſhould ſeem to be making the barren fertile with mere words, it behoves him to explain which among juſt kings has reigned under the ſole law of nature, and alſo which firſt attained the kingly eminence; ſince experience increaſes not a little our confidence in arguments, and Varro ſays that "that is an excellent manner of teaching which adds examples of the thing you are about to tell." For if the law of nature produced one juſt king, it is not to be doubted but that it could have produced many; and a bad tree cannot bring forth good fruit; therefore by the fruits of this law we ſhall the more fully acknowledge it, as the Lord ſays, "By their fruits ye ſhall know them." Again, if the firſtborn among kings confeſſes himſelf to be the ſon of this law, he will thereby ſhow that his brothers, later born, are its ſons likewiſe, or will rightly ſay that theſe are not his true kinſmen. Therefore, what Holy Scripture, or the holy Doctors teach concerning theſe, it now becomes us to examine.

Chap. VI.

Melchiſedech was made King under the Law of Nature only.

IN the time of the patriarch Abraham, which was the beginning of the third age of the world, Pharaoh was king of Egypt, Abimelech was king of Gerar in Paleſtine, and there were many other kings with diſtinct kingdoms, like thoſe of modern days, as the book of Geneſis copiouſly informs us, where, in the fourteenth chapter, we read, that after Abraham returned from the fight in which he had conquered four kings, who before vanquiſhed five kings of the Sodomites and of two other places, to the valley of Salem, which is the Valley of the King, there met him the king of Salem, concerning whom in the ſame place it is thus written, "But Melchiſedech, king of Salem, bringing forth bread and wine, for he was prieſt of the Moſt High God, bleſſed him, and ſaid, Bleſſed be Abraham of the High God, who created heaven and earth, and bleſſed be the High God under whoſe protection thine enemies are in thine hands; and he gave him tithes of all." The city of Salem was afterwards called Jeruſalem, and the valley above mentioned was the way to Jeruſalem, as Joſephus ſays in the firſt book of his Antiquities. That all theſe things were ſaid and done at a time when the human race was governed under the law of nature is not to be doubted. Oh, how fruitful are theſe words of Geneſis in ſacred graces, and in the rudiments of our religion! The Sacred Hiſtory is not content to honour this juſt man with the title of King alone, but, for the greater beauty and glory of his eminence, it diſplays him reſplendent with the dignity of prieſtly exaltation, by naming him Prieſt of the Moſt High. Oh, what a ſacrament of a greater ſacrament is here! when the prieſt of God, crowned with kingly honour, ſtill living under the law of nature, offers bread and wine to the victor! Who could have been found more faithful, more juſt, or holier than this man, who having learned of God by the law of nature alone, (which yet the Moſt High left not without grace,) confeſſed that He is the Creator of heaven and earth, and that He ſo governs the actions of men that only by His grace could victory come out of the exploits of the greateſt war. Did not this man deſerve that the great Patriarch, by giving him tithes, ſhould not only prefigure but initiate man's duty to offer tithes to prieſts, or rather to God, as a perpetual ſacrifice; which thing his grandſon Jacob alſo promiſed that he would do of all things which God had given him (Gen. xxviii). But theſe things happened not but in the valley of Salem, which is the way to Jeruſalem, where afterwards, not in a figure but in reality, the true ſacrament flowed forth in the time of the law of grace. Have we not now found a king reigning juſtly under the law of nature, whoſe empire conſiſted in no human law, ſince at that time there was none other law than the law of nature? whom alſo not only Scripture here affirms to be the prieſt of the Lord, but the Prophet alſo confirmed as rightly filling that office, when he ſaid of Chriſt, "Thou art a Prieſt for ever, after the order of Melchiſe-

dech." For he ſaid not "after the order of Aaron," who had been conſtituted High prieſt in the time of the law given (by Moſes), but "after the order of Melchiſedech," who was made prieſt in the time of the law of nature.

Lo how highly the law of nature is here extolled! whence afterwards it grew into a cuſtom to call juſt men prieſts; wherefore Jethro too, Moſes's kinſman, was called the prieſt of Midian (Exod. xviii.); and the Civil Laws, when they define *jus*, ſay that it is "the art of the good and the equal, on the ſtrength of which they call us Prieſts." It hath now, if I am not miſtaken, been clearly ſhown, that the law of nature did juſtly conſtitute a juſt king, whom Divine grace ſent not away empty. Wherefore we have rightly weighed the power of the ſaid law, nor can we doubt but that it can produce like effect in all other caſes, if men be willing to ſubmit themſelves to it; ſeeing that the Canons referred to decide it to be in force for ever. Nevertheleſs, ſince we promiſed above to inquire who was the firſt king under this law, which Melchiſedech is thought not to have been, the bond of our promiſe requires us to examine more certainly what the Scripture ſaith touching this matter.

Chap. VII.

Nembroth was the firſt who had a kingdom, and yet he was not a King.

BEFORE the above-mentioned nine kings, of whom four conquered five, the hiſtory of Holy Scripture calls none by the name of King. Yet in the tenth chapter of Geneſis it is thus written, "And Chus begat Nembroth; he began to be a mighty one in the earth, and he was a mighty hunter before the Lord:" and a little after it is thus written, "And the beginning of his kingdom was Babylon, Aroch, and Aroth, and Calonne in the land of Sennaar. Out of that land went forth Aſſur, and builded Nineveh, and the ſtreets of the city, etc." Lo here have we found the firſt potentate and the firſt kingdom; but as yet we have diſcovered no man reigning, or marked with the name of King. And yet that kingdom was the kingdom of the mighty one himſelf, ſince the Scripture ſaith that "Babylon was the beginning of his kingdom." But the poſſeſſor of this kingdom was not worthy of the name of king (*rex*), ſeeing that a "rex" is ſo called, *antonomaticè*, from ruling, (*à regendo*), and "ruling" hath its origin from the rule of right (*à rectо*); whence he alſo who rules not rightly hath no right to the name of king (*rex*), although oppreſſing the people by his power he ſeem to reign, like Nembroth, "who was a mighty hunter before the Lord," that is, an oppreſſor and deſtroyer of men; even as hunters are deſtroyers, and not rulers, of wild beaſts; which Nembroth alſo Auguſtine, in the ſixteenth book of the De Civitate Dei, calls a giant. But ſuch an one is nothing but a hunter in the ſight of God, although, in the ſight of man, one who oppreſſes and doth not rule may ſeem to be a king (*rex*). In like manner alſo a tyrant, although he hath been eſtabliſhed as king, yet when he hath caſt away the cares of kingſhip, and learnt

the manners of a Nembroth, puts off the name of king, and puts on that of tyrant. Wherefore, when the people riſe againſt ſuch an one, they are wont to ſay that they have not ſlain a king, but, in their own defence, a tyrant.

Thus did the people of Rome in killing Nero; thus alſo the Senate ſaid that they had juſtly defended themſelves when they made an end of Domitian; whence Tully ſays, in the third book of the Offices, that to kill a tyrant ſeems no crime to the Roman people, who of all noble deeds conſider that the nobleſt.

Nevertheleſs, although the death of theſe and ſuch like men came opportunely for the world, it was not lawful for any one to do this thing, leaſt of all for their ſubjects, to whom many times, as required by their own deſerts, the Lord appointed wicked kings, ſaying by his prophet Oſee, "I will give them a king in my fury," and calling Nebuchadnezzar, the oppreſſor of the people of Iſrael, his "ſervant" (Jer. xxv.). Neither does the Law, which ſays in general, "Thou ſhalt not kill," ſuffer any man to be ſlain without judgment. Yet let the tyrant, whoſe death is good for the people, yea, a thing to be prayed for, beware leſt they ſlay him, ſince Homer ſays that "avenging wrath is ſweeter than honey;" but let the people fear to kill their king, although a tyrant; for though like Nembroth he be not worthy of the name of king, yet the kingdom is his, as that of Babylon, which Nembroth poſſeſſed, was ſaid to be his; and though it muſt needs be that offences come, yet "woe unto that man," ſaith the Goſpel, "by whom the offence cometh."

Truly, however, to thoſe who rightly look into the matter, this which St. Thomas ſays, "The dominion of tyrants is not wont to laſt long," contributes not a little towards the patient enduring of oppreſſors. Whence Ariſtotle, in his Politics, reckoning up many tyrants, proves all their reigns to have been brought to a ſpeedy end; wherefore alſo that grave and moral Seneca, commending his opinion, conciſely aſſerts, that the greater the vehemence of the ſtorm the ſhorter time it laſts.

Thus have we now diſcovered the firſt kingdom and its ruler, but we have not yet found any one to whom firſt a kingdom came, or who was firſt called King. And ſince Holy Scripture, which diſcloſes his kingdom, hath not condeſcended to record his name, it is believed that his character was not as worthy of memory as his dominions.

Notwithſtanding, as we have promiſed to ſearch out what was the name of the firſt king, and as Holy Scripture hath paſſed it over in ſilence, and as Diodorus Siculus ſays, in the firſt book of his Ancient Hiſtory, that ſome hiſtorians do not hand it down, we will endeavour to make it out from one of the Saints.

CHAP. VIII.

Belus was the first King, so named, and reigned in Babylon, the capital of the Assyrians.

SAINT AUGUSTINE, in the sixteenth book of his De Civitate Dei, chap. xvi., saith thus, "In Asia had prevailed the domination of an impious state, the head of which was Babylon, which earthborn city hath a most fitting name, that is, Confusion. There reigned Ninus, after the death of his father Belus, who had first reigned there for seventy-five years. But his son Ninus, who on his father's death succeeded to the kingdom, reigned fifty-two years. He was in the forty and third year of his reign when Abraham was born, which was about the year one thousand and two hundred before Rome, like another Babylon in the West, was founded." See how, although Nembroth was the first who possessed the kingdom of Babylon, yet this writing says that Belus was the first who reigned there. Hence it is one thing to have a kingdom, as Nembroth the first tyrant had it, and another thing to reign, as Belus the first king, after whatever manner, did reign. Thus have we discovered the first King—(though not being strong in his morals Holy Scripture condescended not to commemorate him)—Belus by name, whom Vincentius in his book De Morali Institutione Principum, calls Belus Nembrothides, whose son Ninus founded the city of Nineveh, and honoured it with his own name, whence from Ninus it was called Nineveh; although the book of Genesis says that out of the land of Sennaar went Assur, and builded Nineveh; for, a long time after its first building, Assur, who was of the seed of Shem, possessed the kingdom of Nembroth, who was of the seed of Ham, and built, that is enlarged, Nineveh, and his kingdom was called the kingdom of the Assyrians, which was long the greatest kingdom of the world. (St. Augustine, Book xvi. chap. 3.)

CHAP. IX.

It is doubted whether before the Deluge there were kings in Enoch, which Cain built.

NOW, before the Deluge we do not read that the human race had any king. Yet, Augustine (De Civ. Dei, Book xv. c. 20), says that it is possible that Cain and his sons, who are named in Genesis, were kings of Enoch, yet does not himself affirm that they in fact were so. And if they were—and although many evil men reigned in the beginning of kingdoms—yea, if these very evil men were the first beginners of these same kingdoms, all this is no hindrance to what we have said:—namely, that kingdoms were first instituted under the law of nature. For the fratricide Cain himself was the first to found a city, even as the fratricide Romulus produced the city of the Romans; Cain also first taught men to sow the earth, and his sons the art of working in iron, and the sciences of singing

to organs and building houſes; and, as Joſephus ſays, Cain firſt cauſed weights and meaſures to be made, and ſet up land-marks for fields. And, although he and his ſons were the worſt of men, yet what could be more convenient for man, what more juſt and honeſt than thoſe things, which from them took their beginning? Do we reject the medicine which a wicked phyſician exhibits to us? Do we condemn the truth which an infidel proclaims to us? Cain and his iſſue the Lord enveloped in the waves of the Deluge, yet the good inventions he extinguiſhed not in the waters, but enriched his beloved juſt ones, whom he reſerved from the waves, with the inventions of thoſe evil ones whom he drowned. What good thing has ever periſhed by means of the moſt finiſhed wickedneſs? Doth not Solomon ſay in Eccleſiaſtes, chap. 2, "To the ſinner God hath given affliction and trouble above meaſure, that he may heap up and gather together, and deliver up to him who hath pleaſed God." Oh! how great is the weight of Divine power, and how great is the goodneſs of His Providence, which is Eternal Law, that not only the good things of the good man, but alſo the good and bad things of the bad man all work for the advantage of the good, and that no impious man hath ever perpetrated anything which is not turned to the glory of the univerſe! Thus good things praiſe God, and all evil things praiſe Him alſo, which, though not ſo ordered by men, diſpoſed by God's judgment, work out His honour in due order, confer good things upon the good, and beſtow juſtice richly upon the bad. Thus nothing remains in the world that ſingeth not with the Angels—"Glory to God in the higheſt." The Lord not only commanded but approved of the royal dignity, and the inſtitution of it; ſee Geneſis, chap. 17, where He ſaid to Abraham—"Kings ſhall come forth from thee"—and the 26th chapter of the ſame, where He ſaid to Iſaac ſojourning in the land of Paleſtine—"For to thee and to thy ſeed will I give all theſe regions, fulfilling that which I promiſed to thy father Abraham," and the 36th chap. of the ſame, where the Lord ſaid to Jacob, "Kings ſhall go forth from thy loins, &c." Was not that a good thing which the Lord ſo diligently promiſed to theſe Patriarchs, as if to crown the heap of all the benefits with which He had ſo copiouſly endowed them, in decreeing that a people acceptable and peculiar to Himſelf ſhould be begotten from them? In like manner the Apoſtle approved of the royal ſtate, when he enjoined all to obey the king as ſupreme. And ſeeing that all men are ſo much the better as they are more like to God, who can be better or holier than the king, who as a ruler of men is like unto God, who ruleth all things? This we may gather from the opinions of St. Thomas, in the book which he wrote to the king of Cyprus Concerning the Government of Princes.

CHAP. X.

Here the Author ſheweth that all ſuperior kingdoms were eſtabliſhed under the Law of Nature, and ought to be poſſeſſed by her authority.

THEREFORE the kingly power is good, although it were begun by wicked men; and, whether it originally aroſe and burſt forth before the Deluge, or after the Deluge, yet it took its beginning under the Law of Nature only. For before the Law of Moſes there had been no other law, except certain cuſtoms introduced by men in certain territories, which could not have begun the kingly dignity, ſince cuſtom only grows from repeated acts and length of time, and ſo could not have been the origin of the rank of king; and the conſtitutions of princes, which only bind ſubjects, were not capable of conſtituting the kingly height, which knows no ſuperior, eſpecially as theſe had their origin from the time of Moſes, as it is written in the ſeventh Diſtinction, firſt Chapter. Nor do the ordinances of men, by which ſome of them are raiſed into kings, deſerve to be called conſtitutions, but rather acts of the law of nature. The law of nature, therefore, alone eſtabliſhed the firſt beginnings of the kingly elevation; wherefore, it would be folly to heſitate about that law having been capable of governing the ſame dignity, ſeeing there is leſs virtue in governing than in creating; nor do we doubt but that it did govern that ſupreme rank after having founded it, inaſmuch, as there then exiſted no other law which could poſſibly govern it. Moreover, that the law of nature is for ever able to do the ſame the ſacred Canons do not allow us to doubt, which proclaim this law to be perpetual and incapable of change. And, if any cuſtom hath grown into uſe, which for the poſſeſſion of kingdoms ſuperadds anything to the law of nature, if ſuch matter of ſupererogation be repugnant in any reſpect to the law of nature, the Canons adjudge it to be annulled, and that it is not to be called a cuſtom, but a corruption. Wherefore it is by the Law of Nature alone that the queſtion propoſed can be terminated, and by it only can every right of royalty be diſcuſſed in any kingdom whatever which knows no ſuperior. Was it not then rightly written above, that the kingly power took its beginning under this law, and that all kings of the earth have reigned, and ſtill reign, under its guardianſhip, thoſe, I mean, who reign juſtly and conſtitutionally (*civiliter*), and who have no ſuperior. For this Law is the mother of all human laws, and if they degenerate from her they deſerve not to be called laws. What ſhe adjudges is juſt, and what ſhe condemns is condemned by every human law. May ſhe therefore, come to us as our Wiſdom; may ſhe take her ſeat as our Judge!

Chap. XI.

Firſt Objection.

BUT if a man ſhall have raiſed a tower, although of the ſtrongeſt, and ſhall not have furniſhed it inſide with the ſtrength of brave men, his inſulting enemies will undermine and proſtrate that tower, or, their aſſault not being repulſed, they will climb its walls, and ravage, and carry away all the treaſures hid within it. Even ſo, the law which we have proved to be ſo firm, if it be not defended againſt the inſults of objectors, by a ſtore of right reaſons laid up within, will ſoon be undermined and fall into ruins from the very foundation, or elſe the enemies climbing up upon it by the might of their ſtrength, will ſpoil it of all its treaſure. If therefore the tower which we have built, I mean the law of nature, ſeem now to be beſieged by envious foes, before we go farther in this Treatiſe we will ſtorm their trenches as beſt we can. It is written in the firſt book of Kings (Samuel), in the 12th chap., that when upon the petition of the people of Iſrael a king was firſt ſet up for them, the prophet Samuel ſaid to the people:—"I will call unto the Lord and he will ſend voices and rain, and ye ſhall know and perceive that ye have done great wickedneſs in the ſight of the Lord in aſking a king over you." And after a little, and after the voices and the rain were ſent by the Lord, it is written in the ſame place, that "the people feared, and ſaid unto Samuel, Pray for thy ſervants unto the Lord thy God, that we die not, for we have added unto all our ſins this evil to aſk us a king." Theſe words ſhew that the choſen people ſinned in aſking them a king; for this the Prophet aſſerts; this the people confeſs; and the terrors of Heaven, ſent to ſtrike the ſinners with the fear of death for their offence, confirmed it. If then it be ſo heavy a miſdeed to aſk for a king, how much heavier a ſin is it to make a king. That people only aſked for one king, the law which is praiſed above hath conſtituted a thouſand kings. How many kings were there in the time of the Law of Nature, when at the very exordium, ſo to ſpeak, of the Law given (by Moſes) Joſhua, the firſt of the Judges, ſlew thirty-one kings in the entering in of the land of Canaan, the greater part of the land being hardly got in poſſeſſion, as appears from the 12th chapter of Joſhua? Can a law be proclaimed to be good which hath worked ſo much evil? If to aſk for a ſingle king be condemned with ſo heavy a ſentence, with how much heavier a judgment will a law be viſited which conſtitutes ſo many kings?

Chap. XII.

Second Objection.

MOREOVER, in the 8th chap. of the aforeſaid book of Kings (Samuel), Samuel is commanded by the Lord to declare unto the people the law of the king who was about to rule over them, and he among other things ſays this, "Alſo he will take your fields and your vineyards and oliveyards, even the beſt of them, and will give them to his ſervants." The law which we have juſtified, forbids to all indifferently, that any ſhould do to another what he would not have done to himſelf. What king ever wiſhed or could wiſh this to be done to him, that the beſt things for which he had laboured ſhould be taken from him and given to one who had laboured not? And if he cannot be ſuſpected of wiſhing this to be done to himſelf, and yet can lawfully do this to another, then doth the law which the Prophet pronounces judge that to be lawful to him (the king), which the law of nature forbids to be done. Doth there then ariſe between theſe two laws implacable war? Oh! what a battle awaits the Author, who was ſtriving to anſwer the queſtion propoſed, and finds himſelf driven into contention with the Prophet. Is not the tower which he has built beſet by the enemy? Lo! here comes Samuel the leader of the hoſt, and with him the people, more than ſix hundred thouſand of them, ſaying, "We have ſinned." The thundering heavens ſhake, as if with artillery, the walls of the tower. The Prophet undermining them, with his rights of the king, threatens their ruin. The people, repenting of having aſked for a king, if, as they are buſy in doing, they ſcale the tower, will deſtroy all the kings which that law hath created, now contending beneath the tower walls, and will carry off their treaſures, that is to ſay, all their kingdoms. The builder, therefore, of the tower, ſtricken with ſuch great calamities, hath condeſcended to treat for peace, and hath addreſſed the beſiegers as follows:—

Chap. XIII.

Anſwer to the firſt cauſe of this war. But firſt the Author throws together the Motives *and the* Cause.

IT is held that the cauſes which have kindled this war between us are two; one hath crept in from the wickedneſs of thoſe who aſked for a king; the other conſiſts in the law which is conceded to kings alone. The firſt, even if it have force to move the ignorant to ſtrife, can never provoke the circumſpect. For the people which aſked for a king declared to the Prophet that they had three reaſons for their aſking, ſaying, "For the king will be over us, and we ſhall be like all the nations, and our king

will judge us, and will go forth before us, and fight our battles for us." Lo! how they aſked for a king, in order that they might be like unto all the nations, that they might be judged by their king, and that he ſhould fight their battles. Now, if it be proved that theſe three things could not move that people to aſk for a king, then did they without cauſe demand a king, and ſo the children of Iſrael defiled themſelves indeed with the ſin of ingratitude, but notwithſtanding blackened not by their act the dignity of king. Wherefore theſe motives we will firſt examine.

CHAP. XIV.

Anſwer to the firſt Motive.

IT is written in Exodus, chap. 19, that the Lord ſpake to the people of Iſrael, by Moſes, the following words: "If ye will hear my voice, and keep my covenant, ye ſhall be for a peculiar treaſure unto me from among all people: for all the earth is mine: and ye ſhall be unto me a kingdom of prieſts and an holy nation." Had not the children of Iſrael then a king, at the time when they aſked for a king? But not like all the nations; for the nations had a man, theſe had God for their king. The former were the people of the God whoſe is all the earth; the latter were His peculiar people, whom the Lord, when He choſe all nations, choſe ſpecially for Himſelf. What king of the nations ever ruled his people as this king ruled His peculiar people? Did He not entertain in tabernacles this people ſojourning for forty years in the vaſt ſolitude of the wilderneſs? Did He not feed them with bread from heaven? He ſuffered not their garments to be corrupted with age, nor their ſhoes to be worn by ſuch long uſe. With a pillar of cloud He protected them all that time from the ſun's heat by day, and with a pillar of fire from the darkneſs and roughneſs of the deſert by night. By the mere ſight of a ſerpent lifted up He deſtroyed the ſerpents which treacherouſly beſet them. Yea, that people was a peculiar one unto Himſelf. Was it then well for them to have another king, or to be like all the nations? And what king ever ſo judged his people as this king His peculiar people? For at His decrees the earth ſwallowed up the rebels, fire devoured the inſurgents, the ſerpent bit the murmurers, and the ſword of the weak ones brought quick deſtruction upon the deſpiſers and the idolaters. What more ſhall I ſay? The overwanton this king cut off by the worſt of deaths, and the chiefs of the fornicators He cauſed to be hung upon gallows. Nor did He ever leave a crime of theirs which He did not moſt juſtly and mercifully puniſh. And what king ever fought his people's battles as He did? For He conquered the kings of Amalek, of the Amorites, of Baſan, of Midian, of Canaan, of Moab, of Ammon, of the Philiſtines, and of all nations, which were enemies to this people. Nor did He ſuffer any kings or nations to get the better of them, except when that people heard not His voice and deſpiſed Him, or tranſgreſſing His covenant,—the condition, under which, as is written above, He adopted

them to be His peculiar people, offered ſacrifice to idols. Oh! how great was then their ſin, to abandon ſuch and ſo great a king, and to deſire to be like as all the nations were who had only men for their kings;—to change king God for king Man;—when the Scripture ſaith: "Curſed be he who maketh his lot worſe;" and the prophet Jeremiah: "Curſed is he who truſteth in man, and maketh fleſh his arm, and his heart departeth from God." (xvii. 15.) "They have not deſerted thee (ſaith the Lord to Samuel), but me." O, word to penetrate a heart of ſtone! "They have left me, the vein of living waters, their God." (Jer. ii. 13.) Of a truth well ſaid the prophet Samuel: "Ye ſhall learn and ſee that ye have done great evil in the ſight of the Lord in aſking a king over you." And, doubtleſs, well ſaid the people: "We have added to all our ſins this evil that we ſhould aſk us a king."

Chap. XV.

The concluſion, which diſproves the firſt objection.

AND although that people committed a great offence in aſking for a king, his proveth not that the kingly dignity which they demanded is an unjuſt thing, nor doth it condemn the law under which that dignity came into being. What is there more ſacred than the Pontifical office, although it is often ſought by wicked men? Again, the active life is not condemned, becauſe he who hath profeſſed the contemplative doth wrong if he abandon it, defiling himſelf thenceforward with the affairs of this world. For in theſe caſes it is the mind, not the condition which is in fault; for "virtue is the only thing" (as he Philoſopher and Auguſtine ſay) "which may not be made a bad uſe of." For by how much the better the thing is which the human mind deſires, by ſo much the worſe is the ſin of it, if it come by it wrongly; even as Boethius ſays, that the greater the dignity is, the more deſpicable it makes bad men when they poſſeſs it. Now, the Lord in this proceeding, although, when the law of the king was pronounced, He confounded the arrogance of the people, yet approved and commended the kingly power in divers ways. For he appointed them a king choſen by Himſelf alone, and not by them, and anointed him with the holy oil and made him His Anointed (*Chriſtum*), which He never did for any king before. Moreover, He filled that king with the ſpirit of ſtrength and ſpirit of prophecy, and changed him into another man, (as is contained in the 10th and 11th chapters of the ſaid firſt book of Kings); and ſo alſo the Lord did to David and Solomon, and many others, whom He afterwards made kings over that people. Long alſo before theſe things He promiſed by Moſes (Deut xvii.) that He would Himſelf chooſe a king to reign over this people; and taught in the ſame place, as ſingularly zealous for the kingly power, the rules by which the kings ſo to be choſen by Him ſhould govern themſelves and their people, and promiſed to the king, if he acted thus, a progeny to ſucceed him on the throne. Who, then, reading theſe things can be ignorant

that the kingly dignity, thus loved and confirmed of the Lord, is a good and holy thing; and that the law alſo under which it firſt came into being, was all the more ſacred as it produced ſuch an offspring. The Lord, nevertheleſs, in this proceeding rebuked the folly and ingratitude of His choſen people, though not the dignity of the kingly height. Wherefore the dignity of king is good, and the law which inſtituted it is good. Wherefore let the people that aſked for a king, which beſieged our tower with its repentance, return home ſatisfied to the full with this diſcourſe; and let the Prophet who thus extols the kingly law draw nigh, and let him hear what ſhall be ſaid.

CHAP. XVI.

Anſwer to the ſecond cauſe of the war above mentioned. But the Author firſt diſtinguiſhes the right of a king reigning royally from the right of a king reigning politickly and royally (politice et regaliter).

H! Samuel, Prophet of the Lord, the Lord did not command thee to proclaim to the people of Iſrael the law of what king ſoever they pleaſed, but He Himſelf, ſtirred up to that ſeverity by the raſh requeſt of the people, ſaid unto thee: "Hear thou their voice, but take them to witneſs, and tell them beforehand the Law of the King (*Jus Regis*), not the law of every king, but the law of the king who is to reign over them." Nor didſt thou, the Prophet, ſet before them the rights of a king in general, but following faithfully the command of God, thou didſt ſay to the people: "This is the law of the king who is to reign over you. He ſhall take your ſons and ſet them in his chariots, &c." St. Thomas, in the book above mentioned, which he wrote to the king of Cyprus, mentioning the various kinds of government which the Philoſopher teaches, commends eſpecially for his own part the regal government and the political government (*dominium regale et dominium politicum*), which kinds of government Ægidius Romanus deſcribing in his De Regimine Principum, ſaith: "That he is the head of a regal government, who is ſo according to the laws which he himſelf lays down and according to his own will and pleaſure, but he is the head of a political government, who governs the citizens according to the laws which they have eſtabliſhed." But that there is a third kind of government, not inferior to theſe in dignity and honour, which is called the political and royal (*politicum et regale*), we are not only taught by experience and ancient hiſtory, but we know hath been taught in the doctrine of the ſaid St. Thomas. For in the kingdom of England the kings make not laws, nor impoſe ſubſidies on their ſubjects, without the conſent of the Three Eſtates of the Realm. Nay, even the judges of that kingdom are all bound by their oaths not to render judgment againſt the laws of the land, although they ſhould have the commands of the ſovereign to the contrary. May not, then, this form of government be called *political*, that is to ſay, regulated by the adminiſtration of many, and may it not alſo deſerve

to be named a *royal* government, ſeeing that the ſubjects themſelves cannot make laws without the authority of the ſovereign, and the kingdom, being ſubject to the king's dignity, is poſſeſſed by kings and their heirs ſucceſſively in hereditary right, in ſuch manner as no dominions are poſſeſſed which are only politickly ruled. And in Roman hiſtory we are taught how that people firſt tried the monarchical form of government under ſeven kings; then how, becauſe they could no longer endure the indolence, luxury, and ſpoliation of their princes, ſhaking off the kingly yoke, the proſcribed Tarquin their ſeventh king, and the kingly rule together, and afterwards ſubmitting themſelves to a political form of government, they were ruled for more than five hundred years under Conſuls and Dictators, regulated by decree of the Senate. But at laſt Julius, being one of the two Conſuls, impatient of power ſhared with a partner, ſeized for himſelf alone the monarchy both of the City and the world; whence from that time he thought to live like a king, yet would not be diſtinguiſhed by the name of King, which was hateful to the Romans, but choſe rather to be called *Emperor*, a title which certain of the Conſuls when Dictators, before affected. But he on account of this arrogance of his being at laſt put to death, Octavianus, a man of the mildeſt character, being raiſed to the monarchy of the whole world, governed it not royally only but politickly by advice of the Senate; and in like manner did ſome ſucceeding Emperors, whoſe government St. Thomas, in his book above mentioned, calls royal and political—royal, becauſe their decrees were law for all their ſubjects, but political, not becauſe they always conſulted the Senators, for many of the Emperors to their own damage deſpiſed their advice, but becauſe they governed the commonwealth for the advantage of the many, namely the Romans, and becauſe the Roman empire did not deſcend to their own heirs, as kingdoms are wont to do. Thus alſo the children of Iſrael, as that Saint (Thomas) ſays, before they aſked for a king, were politickly governed; whence their government was political and royal; political, becauſe the Judges under whom they were ruled adminiſtered everything for their common advantage, and nothing for the individual advantage of them, the Judges; (whence Samuel, the laſt of the Judges, offered himſelf before Saul, the firſt king of the nation, to anſwer for everything that he had done in the office of Judge; and how great was then the aſſembly of the council of that people the Book of Numbers, 16th chapter, reveals, ſeeing that it is written that two hundred and fifty, who were called by their names, were in council in the ſedition of Corah, in which it is evident that none were engaged but thoſe of two Tribes, Levi namely, and Reuben, by which it may be conjectured that there was a great multitude in that council of all the Tribes of Iſrael;) and their government was a royal one, becauſe the King of all kings had ruled it as His peculiar kingdom. In this kingdom, before they had obtained the king, it was not lawful for any man to do to another what reaſon would not ſuffer him to wiſh done to himſelf. No one could take away the ſervant or handmaid of another againſt his will, nor give another man's field to his ſervants, as the Prophet ſays it was the king's right to do. Thus the law of the king which the Prophet predicted was not then the law in that kingdom,

even as ſuch is not the law in any kingdom politickly governed. Wherefore the Prophet did not ſay ſimply and preciſely that the law which he promulgated was the Law of the King (*Jus Regis*), but he ſaid relatively that it was the law of the king who was to rule over the children of Iſrael, as if he had ſaid: "This ſtiff-necked and ungrateful people, which knoweth not its own good, ſhall not henceforth be ruled under a political form of government, nor under a royal and political, as before, but ſhall be governed *dominio tantum regali*, by which, as by hook and bridle, its obſtinacy ſhall be held in."

CHAP. XVII.

Next he compares the Law of the King with the Law of Nature, and ſhows the difficulty of this diſcuſſion.

WE have now related, in ſome ſmall degree, the ſtrife which was conſidered to exiſt between the law of nature and the law of the king, ſo that there now remains not the whole law of kings, but only the law of a king ruling by mere kingly power to compete with the law of nature. But this *Jus Regium*, fighting as it does under the greateſt princes of the world, and truſting to their protection, would ſeem able to engage in no ſmall combat with the law of nature. For St. Thomas, in his book above mentioned, ſeems to think that the more nearly any form of government reſembles the Divine government, the more excellent it is; even as all things are better the more nearly they approach to the Divine likeneſs. From which truth the Saint clearly deduces, that as the one God governs all things ſolely as He wills, ſo every kingdom is better governed by one man of the beſt character, than by many rulers. But ſuch a government can be no other than that of a king ruling with abſolute power, whoſe law conſiſts of ſuch rights as the Prophet predicted. Wherefore it follows that that law is not only not to be blamed, but deſerves to be adjudged the beſt, ſeeing it is the law of the beſt ruler, and moſt reſembles the law of God, who governs all things after His own will. Doth not then the law of the king not only make a ſtout defence in this conflict, but doth it not put the law of nature in ſome danger, inaſmuch as it aſſerts for the kingly law in this reſpect the foremoſt place among all laws? What puniſhment could follow to the people of Iſrael upon the promulgation of ſuch a law? or with what terror could the beſt of laws, under the beſt of kings, inſpire them? Could the law of nature condemn the law which the Lord of Nature eſtabliſhed? Nay, if that had not been a ſupremely good law, the good and all-righteous Sovereign would not have ſuffered His peculiar people to be governed by it. But, on the other hand, when that people, choſen by the Lord from among all peoples to be His peculiar kingdom, and moſt tenderly brought up by Him, as an only ſon by his father, and ruled by laws which He, in His great kindneſs, gave for their ſingular rule and favour—ungratefully making light of theſe things—abandoned Him, even as He Himſelf complained, and deſired to be

again like all the nations, and to have a man for their king to judge them, as all the nations then had, even as it is contained in the eighth chapter of the firſt book of Kings aforeſaid; when the Lord, ſtirred up to anger, commanded the heavens to affright them with rains and thunder, and bade the Prophet bear witneſs and declare unto them the law of the king, and that not of every king, but of the king who was to reign over *them*, with whom He was offended, as though in order that they, affrighted by the ſeverity of that law, might deſiſt from their ſtupid and ſhort-ſighted requeſt, can this law, which the Lord ſo rigorouſly aſſigned to an ungrateful people, be called the beſt of laws, or point to any good for them? What judge awards good things to him who deſerves evil, ſeeing that every juſt arbiter recompenſes good to the good, evil to the evil? Could that people be governed by man under a better law than that under which the Lord had ruled them before? or can that be pleaſing to the ſufferer which is inflicted upon him for his ſin? For their ſin was then at the door, when they were forced to ſay, as is above related, "We have added to all our ſins this evil in aſking us a king."

Yet that a law is bad, which the Lord commanded not only to be publiſhed, but to be written for a perpetual memorial, it is monſtrous to think. Well now, is not he who handles theſe things toſſed about as by ſtormy waves, like a ſhip in a troubled ſea? For if he ſays that the law of the king is the aforeſaid moſt excellent law, he finds fault with Divine Providence, which gave that law to a ſinful nation for its guilt; and, on the other hand, if he condemn it, may he not be found to have condemned, at the ſame time, God the author of it? Lo! what ſtraits on every ſide! What courſe then is to be taken, except that the Author purſue with modeſty that negotiation, to which he above condeſcended, by which perchance he will find ſome conſolation in this his critical ſituation? With this intention he thus addreſſes the Law of the King.

HERE FOLLOW CERTAIN REPROACHES AGAINST THE FOREGOING COMPARISON.

CHAP. XVIII.

The Law of Nature worked out the kingly ſtation in its commencement, although the unjuſt made the firſt beginnings of that rank.

THINK over again, I pray you, Oh! Law of the King, and conſider in thy mind how thou didſt hear above moſt truly declared, that the kingly power took its origin under and from the law of nature, and by it always was and is regulated; to which it is no objection that wicked men began that power; for although the Jews gave Chriſt

to death, God the Father alſo delivered him to death by their means; but the Jews did it for envy, the Father for pity; and in like manner although the unjuſt began the kingly dignity for ambition, the law of nature began it for man's good by means of thoſe unjuſt—they by ſin, the law by a moſt righteous working, ſo that in one and the ſame act not only the virtue of juſtice but the maliciouſneſs of ſin contended in the works of nature's law. Thus, alſo, the iniquity of Cayn firſt for avarice ſet up landmarks in the earth, and the pride of Nimrod firſt uſurped dominion over men, and yet nothing better or more convenient than theſe things could have befallen the human race, inaſmuch as if all things had remained common as before, and there had been no dominion over men upon earth, public affairs after man's ſin would have been managed very ill for man, and for want of juſtice the human race would have torn itſelf to pieces in mutual ſlaughter. For "the Gentiles," as the Apoſtle ſays in the Romans, chap. 2, "although they have not the law do by nature the things which are of the law, and not having ſuch a law are a law unto themſelves, who ſhow the work of the law written in their hearts." But as to the manner in which the nations began the kingly power by means of the law of nature, or rather in which the law itſelf began it by means of the nations, St. Thomas, in the 1ſt Book of his treatiſe, De Regimine Principum, is believed to have truly taught when he ſaid, that among all things which are co-ordinated into one, ſomething is ever found which is naturally regulative of another; as in the univerſe of bodies, the earthly bodies are regulated by the firſt body, that is the heavenly, and the ſame are governed by the rational creature, and man's body by his ſoul, and the parts of the ſoul, as the iraſcible and the concupiſcible, by the reaſon, and all the members of man's body by the head and the heart. And as it is the nature of man to be a ſocial and political animal, living in a multitude, (as in the ſame book is clearly proved), and as everyone naturally provides and contrives for his private and particular intereſt, the multitude of human ſociety, if it were not ruled by ſome one who would take charge of it, would waſte away and periſh, more eſpecially ſince man's nature has been ſpoilt by ſin, by which it has been made prone to go wrong. Hence, alſo, ſince art, as the Philoſopher ſays, imitates nature ſo far as it can, nations have conſtituted rulers for the multitude of their ſocieties, juſt as nature in everything made up from the union of divers things, conſtitutes ſomething to rule, and the power of theſe rulers, becauſe they rule (*regunt*) others, the nations have called *antonomatice* the regal (*regiam*) dignity and power. Thus did the kingly ſupremacy get its origin and being, although under or from unbelievers, yet naturally and by the inſtitution of nature's law. And inaſmuch as that which is always good and equitable is called right (*jus*), (ff. De Juſtitiâ et Jure.) the inſtitution of the kingly power, by whomſoever it was made, was righteous (*juſta*), ſeeing it is held to be always not only good but equitable. Holy Scripture alſo ſuffers us not to doubt but that the Lord Himſelf ratified it, ſeeing that He delegated angels for the protection of the kingdoms which the nations formed, as of the man whom He had created, as is evident from the 9th chapter of Daniel; and although it hath been ſuf-

pected by ſome that the Princes of the Grecians and Perſians who are there mentioned were bad angels, yet Vincentius affirmed in his De Morali Inſtitutione Principum, that St. Gregory wrote that they were good angels. Again, it was no ſmall mark of approbation of heathen kingdoms, that God commanded Elijah the Prophet (III. Kings, chap. 19), to anoint Azahel to be King of Syria, one of the Gentile Kingdoms.

Chap. XIX.

The Law of Nations makes not laws for the Faithful, but often gives names to their laws.

FOR we cannot allow the kingly power to have been inſtituted at the firſt by any other law than the law of nature, ſince it hath been ſhown above that there was no other law at the time of its inſtitution. And although the Civil Laws ſay, that nations have been divided and kingdoms founded by the law of nations, as is expreſſed in the aforeſaid Title of the Digeſts, yet that in no way detracts from what hath been ſaid above. For in the ſame Title it is expreſſly taught that that which natural reaſon eſtabliſhes among all men is preſerved among all nations, and is called the Law of Nations, as being a law which all nations uſe. And what is it which natural reaſon has eſtabliſhed among all men but that natural equity which is nature's law? What elſe, then, is the *jus gentium* which our laws ſo highly extol, but thoſe laws of nature's code which all nations obſerve? For when the nations adopted for their own purpoſes certain laws of nature, which were ſo convenient for them that without them they could not live rightly, thoſe laws ſo admitted by them obtained the name of the Law of Nations. For let it not be ſuſpected that the laws of the nations become the laws of the faithful becauſe the nations made uſe of them. For the Gentiles of old time reckoned idolatry among their chiefeſt laws. Yet what more abominable could be named among believers? But in truth it is only thoſe laws of nature which the nations have admitted for their own government, as diſtinguiſhed from other laws of nature to which all nations do not aſſent, which the civil law deſignated by the name of *jus gentium*. For nowhere in the whole ſeries of the Old Teſtament do we read of any laws being deſignated "law of nations," for it was the civil law only which firſt diſtinguiſhed laws from laws under that name. For it is known beyond doubt that cuſtom among the Gentiles, although of the longeſt, and although it have paſſed into a cuſtomary law, is not on that account binding under the name of law of nations upon the faithful among whom the cuſtom itſelf hath not taken root. For although thoſe ſacred Civil Laws tell us that by the law of nations were eſtabliſhed buyings, ſellings, hirings, and the like, it is nevertheleſs clear and beyond doubt that contracts of this kind exiſted lawfully thouſands of years before nations began to be. For before the Deluge there were no nations, but as St. Auguſtine ſhows, in the 15th Book of the De Civitate Dei, in the days of Phaleg, who

was ſixth from Noah, and whoſe name is interpreted *diviſion*, the earth was firſt divided, and the people was parted into ſeventy-two nations and as many tongues, whilſt the ſons of Noah built the Tower of Babel (Babylon), and before this diviſion it is evident that there were no nations, but in the whole world there was but one nation, one people, and one tongue.

Whence in the tenth chapter of Geneſis it is thus written: "Theſe are the families of Noah after their peoples and nations, and by theſe were the nations divided in the earth." And in the eleventh chapter of the ſame book the Lord ſays, "Behold the people is one, and they have all one language;" words which the Saint aforeſaid remarking, ſaith in his book above-mentioned, "And the Lord God ſaid, Behold the people is one, and they all have one language." That, therefore, which the Laws tell us, namely, that the contracts above-mentioned were inſtituted by the law of nations, is and can be nothing more than if they had ſaid that ſuch contracts were inſtituted by that law of nature which nations uſe in thoſe caſes, and thus not primarily or originally, but ſecondarily and by way of aſſent were inſtituted by the law of nations; and in this faſhion ought to be underſtood the words above quoted, which ſay that nations were ſeparated and kingdoms founded by the law of nations. For before the ſeparation of nations a law of nations did not exiſt. Wherefore nations could not have been put aſunder in the firſt inſtance by the law of nations; but it is evident that nations when ſeparated created that law. Neither, therefore, were buyings, ſellings, and the like begun by the nations, but, having been invented by the law of nature according to right reaſon, were according to the ſame reaſon ratified and admitted by the law of nations.

Chap. XX.

The Law of Nature created contracts among men, and was not changed by man's ſin.

WHEN the Lord had ſaid to Adam, "In the ſweat of thy face thou ſhalt eat thy bread," was it not lawful for Adam from that time to ſell to another the bread which the Lord had called his own? and when it is written in the fourth chapter of Geneſis that Abel offered of the firſtlings of his flock, were not thoſe things then his own which Holy Scripture ſpeaks of as ſuch? And at that time it is evident that no law of nations exiſted, ſeeing that two brothers could not conſtitute nations. Wherefore it muſt be of neceſſity conceded that property in things, eſpecially in things acquired by the ſweat of the brow, firſt accrued to man by the law of nature alone, ſeeing that there was then no other human law; and conſequently buyings, ſellings, lettings, hirings, and the like, took their origin from the law of nature, which is a perpetual law, and, as the Canons above-mentioned ſay, began from the beginning of the rational creation, and varies not with time, but ſubſiſts unchangeable. The ſtate of man, however, was changed by ſin, but not the law of nature,

concerning which the civil laws ſay, that the natural laws which are obſerved among all nations, being eſtabliſhed by a certain Divine Providence, abide always firm and immutable. For the very law which now makes us ſay, "this is mine and that thine," before the ſin of man forbad to ſay ſo. For that law is the ſame when it decrees the innocent man to enjoy his liberty, and when it deprives of his liberty and thruſts into fetters the ſame man conſcious of guilt, and for his crime ſtrips him of all his goods; for in theſe things there is a change of man's condition and deſerts, but not of nature's law. It is the ſame ſun which condenſes liquid mud into brick, and which diſſolves frozen water into liquid; and the breath which kindles the lighted torch into flame is the ſame which cools the hot porridge; for in theſe caſes the qualities of the objects affected produce the changes which the objects themſelves undergo; but the efficient cauſe continues ſtedfaſt and is not changed; and thus the equity of natural juſtice, which once allotted to man in his innocence a ſhare of all things, is no other than that equity which for his offence deprives man, corrupted by ſin, of the bleſſing of ſuch community. Is the law of nature then not conſtant and perpetual? and doth it not, itſelf unchanged, always allot to each and every one that which is his due? Oh! Law of Kings, how doſt thou compare thyſelf with this law? Thou haſt ever been converſant with ſinners upon earth, this Law once in Paradiſe had the glory through grace of governing the innocent. Thou waſt conſtituted by man's cunning, this, as the laws ſay, by Divine Providence. Thou didſt proceed from the nations of the earth, this from God. Thou art changeable with the will of man, this, unchangeable, abides ever one and the ſame. And ſince ſhe rules the king under whom thou ſerveſt, ſhall ſhe not govern thee his ſervant? For, truly, to rule the king is nothing elſe but to rule his acts, among which thou art conſpicuous. Ceaſe then to ſtrive with the Law of Nature, for ſhe is thy miſtreſs, and the miſtreſs of thy lord. If thou doſt well thou wilt be adopted and loved by her as a daughter, but if ill thou wilt be puniſhed as a handmaid.

Chap. XXI.

The evil which might befall the people of Iſrael through the Law of the King being diſcloſed, the author ridicules the compariſon above mentioned.

PONDER alſo in thy mind, thou Law of the King, how during all the time in which that people over which thou doſt preſide was governed under the Law of God, politickly, as His peculiar people, neither the exceſſes of any one of them eſcaped unpuniſhed, nor, as is written above, had any one the liberty to do to another what he would not have another do to him. But when once a man was made their king, although all the reſt of them remained as before under the diſcipline of the law, yet the king himſelf was left ſubject to none, who by force of any law could reſtrain his miſdeeds; and thus the

king raiſed up at the demand of the people received ſuch power, that although he could compel others to live honeſtly, he himſelf, nevertheleſs, from that time forth, could do wrong, free from all bonds of human law. Whence even if he oppreſs with labour the ſons and daughters of the people which aſked for a king, or if he waſte their goods, or appropriate their ſervants and handmaidens to his own ſervice, or give their fields to his ſervants, that king finds none to reprove him, for he had received from God the ſupreme and abſolute power upon the petition of the oppreſſed people, ſo that no power of correcting his exceſſes had been left to any man. What more penal announcement could be made to this people, which by aſking a king had provoked the Lord to wrath, before ſuch a king was granted to them, than to proclaim to them the law of the king who ſhould ſo reign over them? And leſt any hope ſhould be left them that God upon their cry would beat down the tyranny of their king, if he ſhould ſo rage againſt them, the Prophet ſays, "Ye ſhall cry out in that day from the face of your king whom ye ſhall have choſen you, and the Lord will not hear you, becauſe ye have aſked you a king." Hath, then, the law of the king any likeneſs to the law of nature? As the Lord ſaith in irony to Adam, when after his ſin he clothed him in a coat of ſkins,—"Behold Adam is become as one of us."

CHAP. XXII.

A King ruling royally, and a King ruling politickly, are equally likened unto God.

AND although thou, oh! Law of the King, haſt moſt rightly conſidered the prince under whom thou warreſt, who at his nod directs everything in his kingdom, to be in this like unto God, who governs the univerſe as He wills, whence thou didſt no leſs wiſely boaſt thyſelf, as his decree, to be like unto the Law of God, whoſe will is law;—take heed, nevertheleſs, with trembling, leſt, puffed up with theſe thoughts, thou raſhly exalt thyſelf above the laws of a king who governs his people royally and politickly. For thou art like unto the Law of God by which He rules in the whole earth; but thoſe laws are like unto that Law by which all the Bleſſed reigning together with Chriſt are ruled in their native country, in that peace which they long for, (of whom ſome are ſenators, and ſit upon thrones judging men; yea, and ſome, as ſaith the Apoſtle, ſhall judge angels;) where there ſhall not be wanting the conſent of all the citizens in every judgment of the King.

And St. Thomas ſaith, in the 2nd book of his De Regimine Principum, that the political government is to be preferred to the royal, if the former be referred to that ſound ſtate of human nature which is called the ſtate of innocence, in which there was not a royal but a political government. Nevertheleſs, ſince God ruling in heaven and earth is ever of one and the ſame power and majeſty, and the judgments which ye Laws both pronounce, are not the judgments of man, as Jehoſaphat ſays in the 19th chap. of 2nd

Chronicles, and ſo neither of the kings to whom ye are ſubject, but are the judgments of God, who is no accepter of perſons, nor yet of peoples; for, as St. Peter ſaith in the 10th chap. of the Acts, "In every nation he who feareth him, and worketh righteouſneſs, is accepted with Him"—wherefore, ſeeing that the equal likeneſs of God hath rendered equal the kings under which ye rule His people, and both are monarchs in their kingdoms, as God is ſole monarch in the world, ſo reckon ye yourſelves as equal laws, without diſparity of power or dignity.

Chap. XXIII.

Advice to him who reigneth royally, to reign alſo politickly.

BUT thou, O King, who reigneſt royally, make it thy buſineſs, as beſt thou canſt, to rule thy people politically alſo. For "polity" (*policia*) is ſo called from πολυς, which is *plurality*, and ικων, *adminiſtration*, as it were a *ſyſtem of government adminiſtered by advice of many*. Manage, therefore, the commonwealth of thy Realm by the counſels of many. The kingdom of the Romans, long regulated by the counſel of thirty-two Senators, grew from the ſmalleſt into the greateſt empire of the world. Solomon, wiſeſt of men, exalted to be a king, prayed not only for wiſdom with which to rule the people, but alſo for a teachable heart by which to learn more than he knew by nature. But his ſon, Rehoboam, deſpiſing the advice of the wiſe, loſt more than ten parts of his father's kingdom. Whence we are inſtructed that the good ſenſe of a king, whoſoever he be, is not ſufficient to rule a kingdom without the ſupport of counſellers, even though the king were a ſon of Solomon. He who is taught by the wiſdom of many, is ſtrong in their prudence, but he who depends upon his own wit hath evidently only the wiſdom of one.

Chap. XXIV.

He who reigns politickly is here adviſed to govern in certain caſes royally.

AGAIN, O King, who governeſt politickly, govern thy people royally alſo, when occaſion demands it. For it is not all caſes which will admit of being embraced in the ſtatutes and cuſtoms of thy kingdom; wherefore, ſuch as remain are left to thy diſcretion; for thou doſt deal with all criminal matters according to thy will and pleaſure, and doſt mitigate or remit all puniſhments, provided only thou canſt do ſo without damage to thy ſubjects or offence againſt the cuſtoms and ſtatutes of thy kingdom. Equity (*epikaia*) alſo is left to thy ſagacity, leſt the ſtrictneſs of the words of the law, confounding its intent, ſhould hurt the common good. For the law which forbad to aſcend the walls of

the city that man is adjudged not to have broken, who mounting the walls without licenſe drove back the enemy ruſhing in of a ſudden, who would otherwiſe have taken the town. For on that occaſion the obſervance of the law would have ſwallowed up the law along with its authors. Nor would thoſe Maccabeans, who were ſlaughtered on the Sabbath-day, have been deſpiſers of the Commandment which preſcribed without condition the obſervance of the Sabbath, although they had gone forth on the Sabbath-day from the caverns in which they were hiding, and routed their inſulting enemies (1ſt Maccabees, chap. 2). Equity, as ſaith Ægidius Romanus, is indulgence above what is juſt, for human nature always begs for pardon. This virtue, as the Philoſopher ſays in the fifth of the Ethics, detracts not from legal juſtice. For *epickaia* is ſo called from *epi*, which is *above*, or *praiſe*, and *kala*, which is *lax*, (l being changed into i,) as it were a *ſuper-laudable relaxation of the ſtrictneſs of law.* Hence that ſuperior authority is held to have abſolute power, not indeed ſo as to vio ate a perfect law, but ſo as the rather to fulfil a law of his own kingdom by reaſon of the law of nature, which is natural equity. For oftentimes the written law lies as it were dead under a covering of words, though not wholly lifeleſs, and then the Prince, by means of equity, routes its vital ſpirit as if from ſleep, as a phyſician relieves a ſtupefied patient in a ſyncope, ſo that then that ſaying of the Goſpel may be uſed concerning two laws repoſing under one covering —"There ſhall be two in one bed; one ſhall be taken, and the other left." Often, alſo, the mind of the lawgiver did not perceive all that the words of the law embrace. Wherefore in ſuch caſe the office of a good prince, who is called a living law, ſupplies the defect of the written law, which, like a dead thing, continues always immovable. Whence the Philoſopher ſays, not without cauſe, that a kingdom is better governed by the beſt king than the beſt law. But let a king ruling politickly ever beware leſt, repudiating ſuch laws of his own kingdom as are pregnant with juſtice, he enact new laws without conſulting the chief men of his kingdom, or bring in foreign laws, ſo that, refuſing for the future to live politickly, he oppreſs his people with his *jus regale.*

CHAP. XXV.

Here are explained certain caſes in which a political ruler will of neceſſity govern royally.

NEVERTHELESS, there are other caſes, and very many of them, in which it is ſometimes right and expedient for a king governing politickly to act *regaliter* againſt ſome of his people; as if his people has riſen in arms againſt him, or a foreign people has invaded his kingdom, where time will not allow to do everything which the neceſſity of reſiſting and repelling attack requires in due form, and by proceſs of the laws which prevail in that kingdom in time of peace. Wherefore that king will be at liberty at his own will to take the ſons of his ſubjects, and ſet them in his chariots, and make them

riders in his chariots, and do everything elſe which the Prophet warned the people of Iſrael was the right of the king. For as the phyſician takes care of the ſick man, ſo doth every king of his kingdom; for as diſeaſe is the weakneſs of bodies, ſo vice is the weakneſs of ſouls. A phyſician often binds a ſick man labouring under a cancer or a gnawing diſeaſe, leſt the ſufferer, impatient of the bitterneſs of medicine, fly from his own ſafety; and ſometimes the ſurgeon cuts off the affected limb, when he cannot ſave the reſt of the body by any other means; nor does the phyſician or ſurgeon err, provided he reſtore the ſick man to health, though maimed. So neither doth the good king err who, in a time when ſuch commotion hath ariſen in his kingdom, waſtes the goods of his ſubjects or expoſes ſome of them to inevitable perils, or oppreſſes others with burdens and toils for the ſafety of the kingdom, which otherwiſe he cannot preſerve. For ſince art, as is ſaid above, imitates nature, and nature works everything for the beſt, and the art of living holds the primacy among all arts, inaſmuch as all other arts refer to it; as nature ſuffers the human body to be mutilated by the ſurgeon rather than periſh outright, and impels the ſeveral members to expoſe themſelves to blows rather than allow their head to be endangered, ſo, rather than the king, who is the head of his kingdom, periſh, his ſubjects muſt be expoſed to danger; and as the king, as St. Thomas ſays, is given for the kingdom, and not the kingdom for him, inaſmuch as he is related to the kingdom as the thing cauſed to the cauſe, he ought to ſurrender himſelf to all ſorts of dangers, rather than that the kingdom periſh. Wherefore, when the foregoing is conſidered, it is not the dignity or ſtate of a king reigning royally, and ſo only, or of a king preſiding over his people both royally and politickly, that doth ſet one of theſe above the other, but only the goodneſs and juſtice of the ruler. For the likeneſs which their dignity hath to the governance of God makes them equal, but yet thoſe individual kings are often unlike in reſpect of that likeneſs whereby they are aſſimilated to the Divine actions. Therefore, clap your hands, ye ſubjects of a king ruling royally, under a good ſovereign, when ſuch a one there is, becauſe ye muſt needs mourn when an inſolent or graſping king rules over you. And you, ye ſubjects of a king preſiding royally and politickly over his kingdom, conſole yourſelves in this reſpect, that, if your king be equally arrogant, he hath not a looſe rein for it, like the other.

Chap. XXVI.

A king ruling politickly is of equal power and liberty with a king governing royally.

AND although a king governing politickly cannot change his laws without the aſſent of the chief men of his kingdom, but yet when laws are deficient can ſupply their place, let not the law royal on this account exalt itſelf, as thinking itſelf more powerful or freer than the law political, or its king more powerful or freer than a king governing the people politickly; ſeeing that the poſſibility

of ſinning is not the danger of power, but of impotence and ſlavery, as in the caſe of privation of ſight or ignorance of virtue. For if the breath of pride ſo affect the ſoul of a man, that abandoning humility and modeſty, he is raiſed into ambition and plundering of kingdoms, or if luſt hath ſo fired his fleſh, that he lapſe into luxury and lewdneſs, or if the crime of covetouſneſs, or ſwelling of anger caſt a man down into the villany of theft or murder, doth not that man's ſin then proceed from his impotence, ſeeing that unleſs he ſurrendered himſelf a conqueſt to thoſe vices, ſuch ſins could not be accompliſhed? Thus, alſo, every ſin with which a man is ſtained proceeds from the impulſe of vice and the folly of man, by which he makes himſelf a ſlave to thoſe vices; whence it muſt needs be confeſſed that it ariſes from the impotence of a ſpiritleſs and daſtardly being. Wherefore to be able to ſin is not power or liberty, no more than to be able to grow old or rotten, nor can he who is powerful to ſin be called powerful abſolutely, on account of the contrary quality contained in the adjunct, no more than a dead man can be called abſolutely a man. Oh! how conſpicuous then is the ſinner's impotence, and how great is his ſlavery proved to be, when he, firſt vanquiſhed by evil vices affecting his mind, as though by tyrants too ſtrong for him, through his own puſillanimity and ſluggiſhneſs of ſoul, hath yielded himſelf to them as a ſlave; even, as the Lord ſaith—"He who committeth ſin is the ſervant of ſin." Whence, afterwards, by his own affections and paſſions (which the ancients called *perturbationes*), as though under chains and fetters, he is thruſt down into the dungeon of ſlavery; concerning which Boœthius writes thus in rhyme:—"For although the Indian land afar tremble at thy laws, and fartheſt Thule ſerve thee, yet not to be able to baniſh black cares or put to flight wretched lamentations, this is not power." And ſeeing that all the actions of man, as the aforeſaid Boœthius ſays in his fourth book, De Conſolatione, &c., are accompliſhed in two things, will, namely, and power, (concerning which a certain rhymer ſays—"Two things make all doings—will and power; put them aſunder and they effect nothing;") it is evident that when a man hath done a thing, he hath had the will and power to do it; and if a man hath wiſhed to do a thing and not done it, he is judged of neceſſity to have been in that thing without power. But inaſmuch as the Supreme goodneſs hath ſo affected the nature of human kind in its beginning with His own goodneſs, that man ever wiſhes for good, (as the ſame Boœthius ſays—"Man, unleſs ſeduced by error, cannot wiſh for anything but what is good, which is diſtinguiſhed as an object of the will"), it follows that, if a man forſake the doing of good, it comes of impotence, ſince it cannot have proceeded from will. Wherefore, if it be good for every people to be governed by laws to which they themſelves aſſent, it will be admitted of neceſſity that the rule of a king who governs his people by ſuch laws, which is called a *regimen politicum*, ſprings from the power, as it doth alſo from the will of ſuch a king; wherefore every ſuch king is powerful; nor can he by reaſon of ſuch a kind of government be called powerleſs, or not free, ſeeing that what he wiſhes he does, not hindered by any more powerful than himſelf. Moreover that it is good for a people to be ruled by ſuch laws, St. Thomas, in

the firſt book of his treatiſe above mentioned, ſeems to have moſt openly taught. For when in that place he had condemned oligarchy, which is the rule of the few bad, and democracy, which is the rule of the many bad, and had preferred ariſtocracy, which is the rule of the few good, who are called *optimates*, to the rule of the many good, which is called *politia*, he adjudged monarchy, which alone is the rule of a ſingle prince, to be the beſt rule of all. And as he held that rule to be the beſt of all under a good prince, ſo under a bad prince, which he himſelf calls a tyranny, he held it for the worſt. Wherefore, finally, he ſeems in that place to wiſh that the government of a kingdom ſhould be ſo diſpoſed, that all occaſion of tyranny ſhould be withdrawn from the king, as well as that his power be ſo tempered that it decline not eaſily into tyranny; by which words he is not only proved to ſay, that it is good for a people to be ruled by laws to which itſelf conſents, but alſo himſelf to give no ſmall commendation and approbation to the government of a king ruling politickly; inaſmuch as ſuch a king, proceeding according to the laws and cuſtoms of his kingdom, cannot eaſily be turned into a tyrant, and to rule a people in ſuch faſhion can be no hindrance to kingly freedom, even as it is no hindrance to the free will of the angels eſtabliſhed in glory that now they cannot deſire to ſin. Wherefore it may be concluded without more delay that a king governing politickly, who is moſt firmly bound by the laws of his kingdom to juſt judgment, is a prince of no leſs power or liberty than a king governing royally, who ſuffering no bridle can freely wanton as he will; ſeeing that ability to ſin is not power; nor is a political law, excellently well eſtabliſhed with aſſent of the people, of leſs efficacy or virtue than a royal law the moſt equitably promulgated by the beſt of princes.

Chap. XXVII.

The right of the king is the power of the king, which when it hath done aught contrary to the Law of Nature, hath never eſcaped punishment.

THE law of the king (*Jus Regis*), which the Prophet explained to the people of Iſrael, relatively to the king is nothing but the king's power, which a prince governing royally can exert over his people; but when that law is referred to the people, to them it is always law, though ſometimes good and ſometimes bad. But ſeeing that for a king to oppreſs his people is a deteſtable ſin, it is well to inquire why the power of doing this is called *Jus Regis*, leſt this word *jus* ſhould ſeem from the Prophet's opinion to juſtify nefarious actions of kings, which God forbid, ſeeing that the Church ſaith—"They who have done evil ſhall go into eternal fire." Let us examine then how that which is unjuſt can be called law (*lex*). Wherefore in this matter we thus proceed—As a piece of land which is given to me is called my right (*jus*), ſo the power which is given to the king is rightly named the king's right; under which mode of ſpeaking the Laws ſay, that a man

compelled by force to do anything was then not *ſui juris*, that is, in his own power, and that a woman united in marriage to a man is not *ſui juris*, becauſe, being ſubject to the power of her huſband, ſhe is not governed by her own power. Wherefore to ſay, Tell this people the law of the king, was the ſame as ſaying, Tell them the power which the king when ſet over them will be able to aſſume. And although an unjuſt king may unjuſtly uſe that power, the power itſelf is always good, nor can it be defiled by the uſe made of it by the ruler, ſince all power, even as all good, cometh from God. Nevertheleſs the dignity may be, in a manner, brought into ill-fame by contagion of an unjuſt prince, even as an unjuſt prince becomes deſervedly infamous; for, as Boethius ſays, "the greater the dignity of the wicked, the more deſpicable it makes them; for not with impunity do the wicked make compenſation to the dignities which they pollute by their infection." Thus the power of Pilate, of which he made an evil uſe, and in like manner of the Devil, who is always evil, was always good; for the fault is not in the power, but in the mind of him who abuſes it. Thus we often abuſe free will, which is good; and the kingly power, which is moſt excellent and is called *Jus Regis*, many moſt iniquitous kings, if kings they ought to be called, abuſe to the ruin of their ſubjects. Far be it, then, from us to intend that a king tyrannizing over his ſubjects acts legitimately, although he hath received of the Lord the power of thus venting his fury upon them; or that Pilate put Chriſt to death juſtly, although the Lord had given him the power of ſo ſlaughtering Him. Ahab, once king of Iſrael, poſſeſſed the *Jus Regum*, as the Prophet proclaimed, yet when he had unjuſtly taken the vineyard of Naboth his ſubject, the prophet Elijah threatened him for his crime with the moſt ſhameful of deaths. So alſo the prophet Nathan, under a fearful ſimilitude, moſt bitterly upbraided David, king of Iſrael, when he offended againſt his ſubject Uriah. And, as Jerome ſaith in his Comment upon the 19th chap. of the ſecond book of Kings, (2 Sam.) becauſe David unjuſtly divided the inheritance of Mephiboſheth, the king's (Saul's) grandſon, with his ſervant, the Lord alſo parted the kingdom of David himſelf between his grandſon and his ſubject; and although Ahab ſeemed to have proceeded, ſo to ſpeak, not *regaliter* but *politicè* towards the aforeſaid Naboth, inaſmuch as he did not deſire to take away his vineyard by his royal power, but offered him the price of it, and, when even ſo he could not get it, obtained it in proceſs of law by means of witneſſes produced, and by ſentence judicially paſſed upon Naboth; yet, becauſe that deed was done againſt the decree of nature's law, which ſuffers no one to do to another what he would not have another do to him, the king himſelf by the Lord's command was terrified with the aforeſaid moſt grievous threatening. For no edict or action of a king, even if it hath ariſen politickly, hath ever eſcaped the vengeance of Divine puniſhment, if it hath proceeded from him againſt the rule of nature's law.

Chap. XXVIII.

Concerning unjuſt laws and Tyrants.

AND although, as the Laws ſay, "the Prince's pleaſure hath the force of law," and ſo is properly called *Lex Regia*, yet is the law itſelf oftener bad than good, as was Herod's decree, by which all the children in Bethlehem and all the bounds thereof were put to death; for that was the prince's pleaſure from which it acquired the name of law, nevertheleſs nothing could be conceived more iniquitous than ſuch a law. Concerning a like law the Apoſtle ſpoke when he ſaid, "I find a law in my members warring againſt the law of my mind, and leading me captive under the law of ſin which is in my members." Behold here the law of the fleſh and behold the law of ſin! Nevertheleſs the Apoſtle calls one and the other "a law," although a moſt unrighteous one. Thus alſo may a prince unrighteouſly ruling ſay of his unrighteous law, that he finds a law in his mind warring againſt the law of nature, and carrying him captive under the law of ſin, then dwelling in his will. For as that imperious virago, luſt, wantoning in man's fleſh, is called by the poets the tyrant of nature, ſo a king domineering in luxury, and oppreſſing his ſubjects, deſerves the name of tyrant. For tyrant (*tyrannus*) is ſo called *a tyro*, that is, *ſtrong*, or *anguſtia*, as though by his ſtrength ſtraitening his ſubjects; and a tyrant, according to St. Thomas in his aforeſaid book, De Regimine Principum, is a prince who rules for his own pleaſure, and not for the good of his people. This man ſhall occupy the loweſt and moſt grievous place in puniſhment, being of that ſort of princes of whom it is written in the Book of Wiſdom, "To thoſe who are ſet over other men ſhall the hardeſt judgment be done, for to the feeble mercy is granted, but the mighty ſhall ſuffer torments mightily."

Chap. XXIX.

Epilogue of the diſcuſſion between the Law of Nature and the Law of the King.

TIME, impatient of our now prolonged diſcourſe, interrupts us with the warning that we put an end more ſuccinctly to the negociation which we have entered upon with the Law of the King. Wherefore we now deem it expedient to collect, as it were into an heap, whatever we have gained in our progreſs ſo far in this prolix treatiſe, making thereof a ſum total, after the manner of accountants; ſo that, if anything ſtill remain to ſtir up againſt us the minds of thoſe who aſſault our ſtronghold, we may, if it be poſſible, ward that off alſo; by which means we may aſſuage the fury of our beſiegers, and clear away the circumvallation of our citadel, ſo that, to our joy and rejoicing, all who inſult us may go back to their own place. For, firſt of all, we have declared by a clear diſtinction that the

Royal Law, which the Prophet explained to the people, is not the law of all kings, but of those only who rule over their subjects with merely regal sway, such as were the kings of the nations to whom the people of Israel wished to be made like. Whence we have taught that the law of a king ruling royally and politickly, which is always subject to the rules of the law of nature, is foreign to this dispute; and, the labour of our conflict being thus lessened, we have shown that the royal law is not superior to the law royal and political, which thus humbles itself under the hand of nature's law; whence it becometh not only the law royal and political, but the law merely royal also, to be subject to the commands of natural law. We display also in all its greatness the majesty and authority of the Law of Nature, when we allege that that law not only, through grace, ruled man in Paradise in the time of his innocence, but also governed him in like manner in this wilderness of his exile, and that it hath never abandoned any man—just man or unjust. Whence we have proved that law to be eternal, and, while man's state has changed, to be wholly unchanged itself; for we have taught that all the decrees of the royal law, when they are in error, ought to be corrected by the rules of the law of nature. Thus also we have proved that the rules of the political law, and the sanctions of customs and constitutions ought to be made null and void, so often as they depart from the institutes of nature's law, which we have above defined as the mother and mistress of all human laws. Upon the other hand, we have said of the Royal Law, that it did not take its rise in Paradise, or from the beginning of the rational creation, like the law of nature; but, when man's nature had been polluted by sin, and the purity of original innocence lost under pagan kings in the earth, that law burst forth, promulgated by man and subject to his inconstant will, by means of which will and pleasure of his, changeable and changed, sometimes good was wrought, but oftener evil; yet under cover of this inconstant condition, that law was allotted out of a certain Divine severity to the king of Israel for the ruling of an inconstant people, stiff-necked and unthankful, who, by desiring a king, had provoked God to wrath. How, then, doth such a law compare itself to the law of nature? Can any comparison be made of a fly with an eagle, or of a blind mole with a lynx? Nay, if it can, much greater is the unlikeness between the law of kings and the dignity of nature's law. This Law of Nature sprang from God alone, is subject to His Law alone, and under Him, and with Him, governs the whole world; whence it comes that all other laws are its servants, so that there is not a law on earth put forth by man which obeys not the commands of nature's law. This law hath never been seduced by error out of the straight path; this law hath never changed in any part, but, as is shown above, abides unchangeable, though wounded by sin; yea, the Law of God, whose Divine commands she hath never transgressed, rules her ever, as a mother doth a daughter. Whence, by reason of her high birth and origin, as well as for her dignity, power, and magnificence, the order of nature requires that all laws that are called human do pay her deference. Let, therefore, the Law of the King give place to her, as to its mistress and elder, nor presume any more by comparisons to make

itſelf her equal. Theſe things the Prophet hearing, with all his hoſt of kings and all their laws, thus began: "Let us retire from theſe abodes. Let us aſſault this citadel no more. For this is Zion the Tower of David; this is the myſtical, impregnable Throne of Solomon. Here he ſet at reſt the diſpute of the quarrelling harlots; here he ſolved the riddles of the wiſeſt of Queens, and, by Divine grace inſpired, wrote three thouſand parables; here, deſpiſing worldly pomp, which he likened to vanity, he taught men to deſire Wiſdom, and ſalute her with the embrace of delight,—Wiſdom which is the maker (*creatrix*) of nature's law. What more can we ſay? Truly the Lord is in this place. This is no other than the Houſe of God, and the entrance gate of Heaven. For here Jacob, by revelation of God's Spirit, having a ſtone under his head, ſaw a ladder ſtanding on the earth and its top touching heaven, and the angels of God aſcending and deſcending upon it, for he ſaw the Lord alſo reſting on the ladder. Truly this fortreſs is no Tower of Babel, but is a ladder directed to Heaven, upon which the Lord leaning, by means of aſcending and deſcending angels, poureth faith and grace upon man, while he reſts upon the rock, which is Chriſt." And this ſaid, the Prophet raiſed the ſiege of the tower; by which means Peace (which, as St. Auguſtine ſaith, is tranquillity of ſtate) kiſſed Juſtice, and the Royal Law recognized its own order, and reſted therein. So every one of the beſiegers departed in peace to his own country.

Chap. XXX.

Difference between "Jus" and "Lex."

NOW, ſeeing that in what goes before we have named the law which we chooſe to decide the queſtion propoſed ſometimes *Lex Naturæ*, ſometimes *Jus Naturæ*, it ſeems expedient to declare wherefore we thus vary our terms, or produce them indiſcriminately, leſt in confounding the terms we confound at the ſame time the ſubject of which we treat. Now it hath certainly not eſcaped our perception up to this point, that *jus* is to *lex* as genus to ſpecies. For *jus* is ſo called from *juſtitia*, and is everything which is equal and good. But all ſuch is not *lex;* nevertheleſs all law ought to be equal and good, otherwiſe it would not be a ſpecies of *jus*. Thus, therefore, all law is *jus*, but it is not convenient to call all *jus* law; for every man who ſeeks to have back what is his own before a judge hath the right (*jus*), but not the law (*lex*) of claiming it. The law reſides with the judge, whereby he decrees reſtitution to the promoter of the ſuit of the things which he demands, and in doing ſo he renders him both right (*jus*), and law (*lex*). *Lex*, as ſome think, is ſo called *a legendo*, and is a ſacred ſanction commanding things honeſt and forbidding the contrary. But this is Statute law, which is uſually written when enacted, but Cuſtomary law is not enacted, nor always written. And if cuſtom be by the prince's order committed to writing, thenceforward it transforms the name of

cuſtom into the name of ſtatute, and then puniſhes offenders more ſharply than before, becauſe then there is contempt of the command of the prince. Wherefore the law of cuſtom, knowing nothing of letters, and the law of nature, which for ſo many thouſand years was unconſcious of writing, are not named *a legendo*, but *a ligando*, becauſe they bind and are not always read. And if derivation knows not ſuch an origin of the name of *lex*, yet etymology, which tells of *lapidem* as *lædentem pedem*, and *pigrum* as *pedibus ægrum*, will not refuſe to affirm that *legem* may be ſaid to be, as it were, *legam*. Whence law may be ſaid to be the bond of right, by which a man is conſtrained to do or ſuffer what is juſt. And though Law, as above ſaid, is a ſpecies of Right, yet as thus deſcribed it is itſelf a genus in relation to the Law of Nature, of Cuſtom, of Statute, and to all ſpecial and private laws, of which, as above related, the number is like that of the ſtones in the heap or the trees in the foreſt. Therefore ſo often in this Treatiſe as we ſpeak of things which relate to juriſdiction we uſe the word *lex* or *jus* abſolutely; but when the diſcourſe turns upon the title to the poſſeſſion or having of a thing, or ſuch matters as regard not juriſdiction, we uſe the word *jus*, not *lex*. And now let not the reader of this and the foregoing wonder at our poſtponing by many digreſſions the deciſion of the queſtion propoſed; ſeeing that a woman too much haſtened to her delivery often produces an abortion, or by the number of her labour pangs expoſes herſelf to peril of death. And ſo, in order that the progeny of this pregnant queſtion may, if the Lord will, be born ſafe, and the mother be troubled with fewer pangs, the Author amplifies the more, ſo that, if by the envy of aſſailants dangers beſet the mother or the child, there may be found in this Treatiſe antidotes whereby the ſame may be remedied, ſeeing that the Writer cannot always be forthcoming, when his detractors vomit forth their poiſons in ſecret.

Chap. XXXI.

THE ſtrength and authority of the Law of Nature we now underſtand, but its ſpecies we do not yet perceive; whence we are not a little in dread leſt ſome other law aſſuming its name climb into the judgment-ſeat of this trial, by which means we ſhould be ventilating this caſe before one who is not a competent judge, and ſhould ſpend our toil in vain. Wherefore it is neceſſary to examine diligently what this law of nature is which we have ſo haſtily heralded, ſo that, its nature once recognized, we may be able to avoid the court of any ſtrange judge. But as to the means by which its nature may be recognized we are under great doubt. Tully, in the introduction to his book, De Officiis, ſaith that every diſpoſition of a ſubject undertaken by reaſon ought to ſtart from a definition, that it may be underſtood what it is concerning which the diſpute ariſes. Yet, if concerning the law of nature we aſk for its definition, that definition will diſcloſe to us the genus, but

not the ſpecies of the law; becauſe the general deſcription of the law (*jus*) of nature doth not ſeparate that law of nature by which legal queſtions are decided, of which we are in ſearch, from that law of nature by which offspring is begotten, nor from the law by which all ſentient beings produce their fœtus or progeny, nor from the law by which birds build their neſts and bring up their young, and the like, ſeeing that the deſcription itſelf embraces all theſe laws under one context, when it ſays, "Natural law is that which nature hath taught all animals." What can be more obſcurely or indiſtinctly ſaid than this?—to ſuch a degree that no one ſpecies of laws can be diſtinguiſhed from another, ſeeing that it thus embraces them all promiſcuouſly as it were in one bundle. It is the ſpecies that we ſeek for and not the genus; for the genus cannot judge the cauſe of mankind, but the ſpecies, nay, to ſpeak more truly, an individual of the ſpecies. And was it not no ſmall difficulty to Samuel the prophet, to chooſe from among the ſons of Jeſſe the one moſt pleaſing to God who ſhould reign over the people of Iſrael, when he found ſeven of his ſons in one houſe? But it is a much greater difficulty to chooſe one out of ſo many ſpecies which the Law of Nature contains to rule over the world. What if Senſuality, which is embraced under the definition, and ſeems to be the firſt-begotten of human nature, were choſen, even as Eliab, Jeſſe's firſt born, was brought before the Prophet to be anointed king over the people? I think that what the Lord ſaid of Eliab would be ſaid of it: "Regard not his countenance, for I have rejected him." And if a ſecond kind were brought forward, as Abinadab, the ſecond ſon of Jeſſe, was brought before the Prophet, I mean Natural Reaſon, which, after ſenſuality, human nature hath in the ſecond place produced, would it not be ſaid of it, as the Spirit ſaid of Abinadab: "Neither hath the Lord choſen him?" And ſo concerning the other forces and powers which nature hath taught all men; ſo that that may be ſaid of all theſe which was ſaid of the ſeven ſon of Jeſſe: "The Lord hath not choſen one of them." Nevertheleſs, after this Jeſſe ſaid to the Prophet: "There is yet a little one left, and he feedeth the ſheep;" and Samuel ſaid unto him: "Send and fetch him hither." But what readier meſſenger can be found in this buſineſs than Reaſon? For it is thus defined: "Reaſon is a force of the mind partaking of divine light, which of neceſſity brings in truth." But what truth can it bring except the truth of juſtice? And is not this our very law of nature of which we are in ſearch? Yea, the Canons inſpired by the Holy Spirit, intrenched alſo in the writings of the Saints, call the law of nature the truth, where they exalt it above cuſtoms, ſaying: "When truth is manifeſted, let cuſtom give way to truth;" (Di. viii. Cap 4, De Veritate,) and in the ſame place: "Let no one prefer cuſtom to reaſon and truth, for reaſon and truth always exclude cuſtom." And in the ſame Diſtinction (Cap. 7, *Fruſtra*) it is thus written, after the opinion of St. Auguſtine: "Vainly, indeed, do they who are overcome by reaſon allege cuſtom againſt us, as though cuſtom were greater than truth." Lo how thoſe ſacred writings deſignate the law of nature by no other name than that of truth, and how they affirm that reaſon hath the power of clearly ſhowing forth truth! What elſe, then, can the Law of Nature be but this—*the Truth of Juſtice, which is capable of*

being by right reaſon revealed? We have thus found by inſtruction of the ſacred Canons, how the law of nature can be moſt rightly defined, ſeeing that a definition, as Januenſis ſaith in his Catholicon, is a boundary line (*terminus*) demonſtrating what the eſſence of a thing is. It ſeems, therefore, that the law of nature hath the ſame relation to reaſon, as the centre to its circumference. A true circle proves its centre, but yet more truly the centre indicates the truth of its orbit; ſo alſo right reaſon reveals the law of nature, but yet more ſurely that law diſplays the certainty of reaſon. Now, methinks, is brought from the field that little one left, who feedeth the ſheep, David, namely, ſtrong of hand, able to govern the people of Iſrael; he is fair in ſeeming and comely in face. (1ſt Kings, chap. xvi.) So, alſo, this Truth of Juſtice, which hath now come as our *Phroneſis* (moral wiſdom), is comely of face and lovely of aſpect; concerning which Sorobabal ſaith, that it is ſtronger than a king, conquers, is powerful, prevails, and lives to all eternity, and laſts for ever and ever. (1 Eſdras, chap. iv. 38.)

Chap. XXXII.

How we ſhould caſt back the maliciouſneſs of ſuch as cavil at what hath been ſaid.

THE mind of him who writes the above is greatly ſhaken by two rocks in his courſe; firſt, leſt any one ſay: "See this fellow who hath deſcribed the law of nature; he only ſought at the firſt *quæ ſit lex illa*, and now he hath defined *quid ipſa ſit*, he inquired concerning the ſpecies, and he only deſcribes the ſubſtance." What if, having aſked concerning two men whether one of them were John, he were to be contented with this anſwer: "He whom you ſeek is an *animal bipes rationale?*" ſeeing that although he perceives both to be bipeds, and by their ſpeech underſtands them both to be rational, he cannot by that deſcription diſtinguiſh John from the other; for the ſpecies of John is known by demonſtration, and not by definition. So, alſo, not only can the ſpecies of the law of nature be ſhown by demonſtration rather than by definition, but by that means the Writer's queſtion might be more fitly anſwered. In the ſecond place, it ſeems as though the Writer may be marked with the ſtigma of raſhneſs, in having now had the audacity to deſcribe that Law of Nature by which human actions are governed, when in thoſe illuſtrious Civil Laws which have ſo long borne, as it were, the care of all the world, we read no ſpecial deſcription thereof! What could injure the Writer's fair fame with a heavier charge of impudence and raſhneſs than theſe two things? Having, therefore, this fear before his eyes, although he have an ample field to till, he will keep his oxen at a ſtand ſtill for awhile, until he have removed theſe ſtumbling-blocks from the furrow of his plough, leſt by them the inſtrument be ſhaken, and the tillage of his field retarded. And firſt of all, he ſays, that bodily and ſenſible things are more ſurely known by demonſtration than definition—for the knowing of

them hath its ſource from the ſenſes; but things intellectual and incorporeal, being acquired by the ſearching of the active intellect, are made clear to us by definitions rather than by demonſtrations. Wherefore rhetoricians ſeek out perſuaſions, and not demonſtrations, to ſhow their concluſions, ſince what they ſtrive to prove is an intellectual probability; but mathematicians uſe demonſtrations when they conclude anything, becauſe what they ſhow is a phyſical neceſſity. And if a man hath once apprehended with the ſenſes the form of the above-mentioned John, and afterward his perſon be removed to a diſtance from the bodily ſenſe, what doth the intellect then retain of all that it perceived, but only a deſcription of the ſpecies or ſubſtance of him, whom the ſenſes repreſented (*demonſtravit*) to the ſaid intellect? Whence although a corporeal ſubject (*ſuppoſitum*) like John may be better known by demonſtration than deſcription, yet can nothing intellectual, ſuch as ſcience, law, virtue, and the like, be ſo known by demonſtration as by deſcription, or moſt of all, by definition. But the law which we have deſcribed, or rather have defined, is demonſtrated by the aforeſaid deſcription, when it ſays that right reaſon reveals to us the law of nature; wherefore, let thoſe who like not that definition as a definition, uſe it as a deſcription or demonſtration, becauſe, as we believe, it deſerves either name. And to the ſecond objection let the Writer aforeſaid ſay that the Civil Law, which, as is ſaid, hath ſo long borne, as it were, the charge of all the world, cumbered with ſo many offices, hath not cared to unfold the ſeveral particulars which man's mind ſwelleth with deſire to know, but hath left very many to exerciſe the ſtudious, and perhaps out of reverence hath been unwilling to ſhut up within the barriers of a deſcription that Law of Nature which gave it birth; wherefore it hath left it free, and given it the rein. But our Holy Mother, the Church, the Bride of Chriſt, who hath not leant once on the Lord's breaſt, like John, (by which means he drank in ſuch copious floods of wiſdom), but repoſeth ever in His flowery bed, having His left hand under her head, and embraced with His right, ſetting the law of nature before cuſtom and ordinances of man, hath proved it moſt clearly, from the writings of the Saints, to be the very truth of juſtice which by right reaſon may be known. Whence, then, can the charge of raſhneſs be laid upon the Writer, ſeeing that in theſe things he hath written nothing out of the audacity of his own invention, depending upon his own genius, but hath put forth that which he hath drawn from the breaſts of ſuch a mother, out of the fulneſs of her charity; even as Solomon ſays (Prov., chap. 1): "My ſon, hear the inſtruction of thy father, and forſake not the law of thy mother, that it may be an adding of grace unto thy head, and a chain about thy neck, &c.?"

Chap. XXXIII.

The reaſon why the author inveſtigates the Law of Nature.

NOT only now do the dignity and power of the Law of Nature ſhine moſt bounteouſly upon us, but alſo what and of what nature it is, is made clear and certain to us; and yet its origin, by which the nobility of its high birth would be made evident, hath not yet come to our knowledge; this, therefore, let us now ſearch out, for upon the knowledge of it will follow no ſmall honour and veneration for this law. For in ſuch a ſcrutiny will be revealed to us at what time, by whoſe ordinance, and in what manner this law aſſumed the empire of the world, and many other of its diſtinctions, ſtyles, and titles will become known to fame, and in the end its nobility and all its graces will be abundantly and clearly evident. Wherefore we will not be ſlow to ſearch out the nativity of this Law.

Chap. XXXIV.

How to the man alone was promiſed the Prelacy of the world before man was created.

IT is written in Geneſis that, on the ſixth day from the beginning of the creation of the world, the earth being furniſhed with herbs and trees, the water with fiſh, the air with birds, the cattle, beaſts, and reptiles being alſo formed, the Lord ſaid: "Let Us make man in Our image and likeneſs, and let him preſide over (*præſit*) the fiſhes of the ſea, and the fowls of the heaven, and the beaſts of the earth, and over every living creature and every creeping thing that moveth upon the earth." From which words we are plainly taught that Divine Providence then decreed two things to be made which were not yet made; that is to ſay, man and his office, the prelate and the prelacy (*prelatum et prelaturam*), the miniſter and his miniſtry, by which, under God, the world when founded ſhould be governed. For the Lord doth not ſay, "Let Us make man *that* he may preſide over the fiſhes of the ſea," &c., as though that preſidence were the end of man's creation—man, who was to poſſeſs the enjoyment of God, to whom God was to be the end as He had been the beginning; but, conjunctively, the Lord ſaid: "Let Us make man, *and* let him preſide over the fiſh of the ſea, and over every creature, &c.;" whence the Lord made a ſignal diſtinction between man's eſſence and the dignity of his office; not that one ought to exiſt without the other, but that man as ſubſtance and the office as accident ſhould always endure together. The Lord, then, was about to create the ſubject and the accident—not like every accident which may be preſent or abſent, ſuch as piety, pity, and ſuch like virtues, which conſiſt in

man's will, (though not by nature, but by grace and God's goodneſs, wherewith among other things the firſt man made in God's likeneſs had been adorned,) but an accident indelible and natural to man, which ſhould be ſo imparted to and united with his nature that, far from being voluntary like the virtues aforeſaid, it ſhould, like obedience, to which man muſt be ſubject by compulſion if not by will, neceſſarily cohere with human nature by a perpetual bond. Thus the Lord determined to make two things—man, as aforeſaid, and man's office, by which God himſelf would govern the world which He had founded. For what elſe is the preſiding over the whole earth and its living things but a certain office of ruling the earth and all things contained in it, ſeeing that the Lord did not then ordain the firſt man to be the ſole *dominator* of the earth, but even in his creation reſerved that dominion for the man and the woman whom he was about to form out of him, a dominion which was eve after to be conferred upon the man and woman in common. Wherefore t man alone this office of ruling the globe was granted; nor ſhould that office be properly called dominion, but primacy or prelacy, (*prælaturam,*) ſeeing that, by God's decree, man was preferred not to be lord (*dominari*), but to be firſt over (*præeſſe*) all things. For ſo alſo the Church names thoſe who rule its dominions *prelates*, and not lords, ſince thoſe dominions are part and parcel of the Church, and thoſe who rule them, or are ſet over them, are not their lords and maſters. Nevertheleſs, Saint Thomas in Prima Secundæ, and alſo, in the thir Book De Regimine Principum, ſaith that dominion may be taken in a double ſenſe, in one way as a man hath dominion over another as a ſlave, which happens when he uſeth him for his own profit and advantage, and that dominion was introduced by ſin, ſo that man would not have ſuch dominion over man in a ſtate of innocence; in another way dominion can be taker, as it is the office of governing and guiding free men to their own good, or to the common good; and that dominion is natural, and ſuch as man would have had in a ſtate of innocence, inaſmuch as man is a ſocial and political animal, and cannot live in ſociety without ſome preſident and ruler, as the Philoſopher delivers it in the firſt of his Politics. And in like manner, if one man have a ſupereminence in knowledge or juſtice, it would be improper if he did not contribute a ſhare of it for the good of others. Wherefore it is written in the firſt of Peter, fourth chapter, "As every man hath received the gift, miniſtering the ſame one to another." And Auguſtine, in the 19th Book De Civitate Dei, ſaith that "the juſt bear ſway not from the deſire of power, but from the duty of taking care of others." And ſeeing that the apoſtle ſaith that "thoſe things which are of God are ordered by Him," and that "order," as ſaith Auguſtine, "is the diſpoſing of things equal and unequal, aſſigning to each man that which is his due,"—if there were not inequality in human ſociety, there would be no order in that ſociety, becauſe the name of order imports inequality. Thus, therefore, in the time of innocence, order, which is the grace of the univerſe, required that man ſhould have ſuperiority over man; and thus, in a perfect ſtate of the human race, man would have directed man, and, through the duty of taking care for

others, the husband would have governed the wife, the father the son, the wiser the less wise. Wherefore, also, the Philosopher saith, in the first of the Politics, that he who is vigorous in intellect and industry is naturally master, and he who abounds in strength and is deficient in intellect is naturally subject; whence, by taking dominion in the aforesaid second sense, as by Saint Thomas declared, the pre-eminence which man had over the other creatures may rightly be called dominion. Nevertheless, this hinders not that dominion to be also named prelacy, seeing that the said dominion is the office and dignity of being the first over (*præessendi*) all creatures. Yet Saint Augustine, in his 19th book aforesaid, disdains apparently to give the name of dominion to the pre-eminence and dignity which man would have had over man in a time of innocence; for he says in that place, "The Lord would not have the rational creature, made after His image, to have dominion over any but irrational creatures, not man over man, but man over cattle." These are his words. We therefore, it seems, may most fitly, and without incurring the indignation of any objector, give the name of prelacy to the supreme dignity and office of the first man. Which things John Chrysostom rightly considering, gave the name, not of lord (*dominus*), but of president (*præses*), to the first man, preferred (*prælatum*) as he was by the Lord to the office aforesaid. For, as the prelate draws his name (one preferred before the rest) from him who appoints him, so, when a man hath taken his seat in the office of prelacy, he may fitly be named president, or one who sits before the rest. Whence the same Chrysostom, in a certain Sermon, thus spoke concerning the first man, "God made man, whom He was disposing to be president next after Himself, full and perfect, having in himself the dignity by which he should excel, and the power by which he should govern all living things, so that he should be ruler of the world and servant of God, by whom all things had been made subject to him."

Chap. XXXV.

Divine Providence ordained at once the Prelacy of the world and justice.

From these words of Chrysostom it is clear that the duty of the first Prelate was to rule all living things of the earth, and govern them righteously, for the performance of which he possessed full power and perfect dignity; but seeing that for such performance he could not be full and perfect if he had not possessed justice, which is the rule and model of governing, inasmuch as Chrysostom said that he was full and perfect for the ruling of the world, without doubt also he considered him to have possessed that justice which would enable him so to do; for the civil laws say that when one thing is granted, everything is granted without which that one could not be; but without justice the world could not be governed. Wherefore, since the government of it had been committed

to man by the Lord, we must needs confess that justice also was bestowed upon him at the same time, and this was not only thus inclusively ordained, but was afterwards accomplished.

Solomon, that wisest of men, considering these things, saith in Ecclesiastes, "This only have I found, that God made man upright." Now he was not made upright without possessing uprightness, even as he is not a strong man who does not possess strength; or how can any man be judged healthy if he be oppressed with sickness? The first man, therefore, possessed uprightness at his creation, since Solomon thus declares him to have been upright then. But whether that uprightness was justice, which is the mould and rule of all government, it becomes us further to examine. Now Anselm, defining justice, saith that it is "rectitude of will observed for its own sake," and, as a definition ought to be convertible with the thing defined, if justice be rectitude of will, it must needs be allowed that a right will is justice. Wherefore also the Civil Laws say that justice is "a constant and perpetual will assigning to each and every man his right." Whence it follows that the first man, as he was created upright, possessed a constant and perpetual will assigning to every man his right; and, consequently, he possessed justice, by which he was able to rule the whole world, and thus preside over every creature. And that in the beginning of his creation he had such a will, and that all the foregoing has been most rightly concluded, St. Augustine, in the 14th Book De Civ. Dei, affirms, when, embracing all this as it were under one sentence, he says, "God made man upright, and thereby of a good will; for without a good will he would not be upright; a good will, therefore, is the work of God, seeing that He made man in possession of it." Such are his words. Nor is it any objection to this that the first man, transgressing the Divine Law, did not possess a right will, but an unrighteous and inconstant will, so that we cannot call it perpetual; for it did not assign to every one his right, seeing that it withheld from the Lord God that which was His right. For that will by which the first man worked such evil was not the will conferred upon him by the Lord, which we have above defined to have been justice; but the first man abandoned that good will, when, with his will which he had himself made unrighteous, he committed a crime so abominable. For the first will which the Lord conferred upon him could not be properly called his own will, if he had not had the power of abandoning it when he wished. But that first will itself was constant and unchangeable, because it willed nothing but what was constant and unchangeable, although the first man, by the incitement of his own inconstant will, repudiated it; and thus the will with which the first man so unrighteously played the adulterer, was not that will which is defined to be justice, but another, which deserveth not to be called justice but injustice; for it possessed not that rectitude which Anselm defined to be justice, concerning which, after a little, we must more clearly treat in what is to follow.

Chap. XXXVI.

Juſtice and the Law of Nature are of one quality and of accidental eſſence.

BUT is not juſtice, which the Lord commanded to be made in the form aforeſaid, that Law of Nature whoſe beginnings we are in ſearch of? Vainly indeed do we unfold the manner of the nativity of juſtice, unleſs by the ſame explanation we diſcloſe alſo the origin of the law of nature, which we have determined to ſet forth; which we ſhall never do by the way we are now taking unleſs we demonſtrate juſtice and the law of nature to be of one quality and eſſence, although accidental; which, if we do, when the origin of juſtice is made clear, then is the origin of the law of nature equally diſplayed. Therefore, before we turn to anything beyond, let us inveſtigate the nature and virtue of juſtice and of the law aforeſaid, as though they be of the ſame efficacy and virtue. In courſe of which labour, firſt of all it behoves us to inquire whence *jus* is ſo called, or whence the reaſon of that name proceeded, ſo that, perchance, in exploring the mode of its emanation from the depths of juſtice, we may have the good fortune to penetrate thoroughly into its very nature, which once known, its identity with juſtice, or the diſcrepancy by which they are ſeparated, will lie clear and open before us. The Civil Laws ſay that *jus* is ſo called *a juſtitia* (ff. De Juſtit. et Jure). But how doth the etymology of the name advantage us in this ſcrutiny? For etymology and derivation which grammar teaches inſtruct us in the nature rather of words than of things. Notwithſtanding St. Iſidore, in his book of Etymologies, makes known to us ſome natures both of laws and of other virtues by force of etymologies; and it is not to be thought that thoſe illuſtrious Civil Laws have inconſiderately aſſerted *jus* to be ſo called from *juſtitia*. Wherefore, we are bound to conjecture that as *jus* hath derived its name from *juſtitia*, ſo from the ſame it hath derived the origin of its generation, and is thus entitled to be diſtinguiſhed by the name of its parent. Thus *lex* and *rex*, not without a cauſe of like affinity, obtain their names *a ligando* and *regendo*, as if from their proper parents. Nevertheleſs, if we ſay that *jus* proceeds forth from *juſtitia*, as a ſon from the ſubſtance of his mother, then, ſince the ſon can project himſelf beyond the maternal limits, we ſhall needs confeſs that *jus* alſo may be far removed from juſtice, and as this is not true, we muſt of neceſſity ſearch out the mode and nature of another generation. For we cannot ſay that *jus* hath taken its name from juſtice, either by way of relation, as the ſon to the father, who in point of ſubſtance, as aforeſaid, may be either abſent or preſent, or by way of abſtraction, as humanity from man, which is always other than the concrete, ſince we are endeavouring to prove that *jus* is ever the ſame as juſtice; but as the luſtre from the light, the heat from the fire, the guſhing ſtream from its ſpring, ſo doth the law (*jus*) of nature come from juſtice, yet ſo as not to be other than it, even as the luſtre is not other than the light, the heat than the fire, and the running water than its fountain. And as theſe

emanations or productions are the same as the things out of which they emanate or are produced, but the latter, because emanating in and through the former they pour forth their forces in diverse modes, obtain diverse names, so also the law of nature is the same thing as justice in nature, and of the same quality, excellence, and efficacy, although *jus* and justice pour forth the virtues of their unity in diverse modes, and therefore obtain diverse names. For as the human mind, according to Augustine, in his fifth book, De Trinitate, begets knowledge, and mind and knowledge produce love, so that mind is, as it were, the parent and knowledge the offspring, and love proceeds from both,—so justice begets law (*jus*), and justice and law produce equity, and law and natural equity are one with justice, as knowledge and love are one with the mind from which they flow. Wherefore, if we teach perfectly the origin of justice, we teach at the same time the generation of the Law of Nature.

Chap. XXXVII.

Law is born of Justice, as the Son from the Father in things Divine.

But lest such high things being displayed, so to speak, under an humble image, should seem to be treated with any lack of reverence, we are glad to taste them out of higher similitudes, as from a nobler fountain. St. Augustine, in his book De Dignitate Conditionis Humanæ, compares man's memory to God the Father, his intellect to the Son eternally begotten, and his will, proceeding from memory and intellect, he makes an image of the Holy Spirit, which proceeds eternally from the Father and the Son. Not that these powers are eternal, like God, but that those three powers, perpetually operating, bear within them the image of the Eternal Unity. For as three Persons in God are one God, so those three powers in the soul of man are one soul, even as the same Augustine in the same place more largely and clearly declares. So also those supernal spirits, than whom the Lord made man a little lower, He, as the sacred eloquence witnesseth, made lovely with the stamp of his own likeness. Thus, also, the other creatures of his handiwork, whatsoever they be, He adorned out of the plenitude of His beauty, so that there is not a worm nor a creature so small but that it bears the traces of its Maker. Wherefore we are surely not at liberty to think that the Lord left destitute of so great a gift that Law of Nature, which next to man's substance He created with him the noblest of this world's creatures. Whence as the Almighty Himself distinguished man by three such noble dignities, so must we think that He adorned with three noble *insignia*, as with powers and dignities like to the others, that Law of Nature which He would have to be His rule and instrument for governing the world in things temporal. Wherefore, as in God there are the Father begetting, the Son begotten, and the Holy Spirit proceeding from both, which three Persons are one God, so must we think that

in the Law of Nature there are juſtice begetting, law (*jus*) begotten, and natural equity proceeding from juſtice and law, which three nobilities, like footprints of God, form one law of nature. Nor can the writer be charged with the crime of raſhneſs on account of this opinion, ſeeing that the Lord hath worked in like manner in other creatures; for, as the Philoſopher ſays (De Cœlo et Mundo), there is nothing perfect but Trinity, becauſe three things are required for the perfection of everything—that is to ſay, ſubſtance, virtue, and operation. And Dionyſius ſays the ſame in his book De Divinis Nominibus. St. Auguſtine alſo ſays that in the ſun there are his ſubſtance, ray, and heat; the ray is born of the ſubſtance, as the Son is begotten of the Father; the heat proceeds from both, as the Holy Spirit is breathed forth from Father and Son; the ſun proceeds from none of theſe, even as the Father is not begotten nor proceeding, and yet all theſe are one ſun, even as three Perſons are one God. In like manner, alſo, in the loweſt things the image of the Trinity may be perceived. For the fountain begets the ſtream as the Father doth the Son, and the fountain and ſtream make the pool, as the Father and Son produce the Holy Spirit, and yet the fountain iſſues from none of theſe, even as the Father hath His exiſtence from none; and notwithſtanding in fountain, ſtream, and pool there is the ſame water, as in Father, Son, and Holy Spirit there is the ſame ſubſtance. And although in the footprints and ſimilitudes of creatures there be no true likeneſs whereby the creature may be truly aſſimilated to its Creator, no more than the ſhadow to the body, the footprint to the foot, or the image to the real thing, yet in all things ſome likeneſs, however feeble, is diſcovered to their Creator. Wherefore we cannot ſuppoſe the law of nature to have been devoid of ſo great and divine a gift; but we believe it to have emanated from juſtice, juſt as we ſaid above that radiance flowed from light, heat from fire, water from the ſpring, and knowledge from the human mind. And as the aforeſaid Auguſtine likened the generation of the ſolar ray and the flowing forth of the ſpring-water to the generation of the Eternal Son, he emboldens us to ſay that the production of the law of nature may, without the brand of raſhneſs, be likened to the ſame Divine generation. Whence with Chriſt, who ſaith, "I am in the Father and the Father in me," the Law of Nature may ſay, I am in Juſtice and Juſtice is in me. Wherefore, we alſo, with the ſame Lord who ſaid to Philip, "He who ſeeth me ſeeth my Father alſo," are ſurely able to ſay, He who looks upon the law of nature rightly with the eye of reflection truly contemplates that juſtice likewiſe which brought it forth. Thus when the mode of the origin of juſtice is ſhown, the manner of the birth of the law of nature is at the ſame time revealed.

Is not, then, the law of nature moſt rightly defined in what goes before, when it is aſſerted to be the truth of juſtice, ſuch as human reaſon is capable of unfolding; ſince as God is the Son of God, the uncreated Truth of the Father, ſo the Law of Nature is begotten of Juſtice, the created Truth of Juſtice, which, itſelf eternal, now regulates ſince its foundation the world which Eternal Truth hath founded?

Chap. XXXVIII.

How the Law of Nature was created.

FROM what hath been above written we now underſtand how the Law of Nature before it came into being, was, by the oracle of Divine Providence, ordained to be afterwards created; but how it was perfectly created is not yet made known to us. The book of Geneſis, therefore, aforeſaid, which revealed to us the Divine counſel concerning its creation then to come, muſt, we believe, be conſulted and examined concerning its perfect creation. But in the 2nd chapter of the ſaid book it is thus written: "Therefore the Lord God formed man of the clay of the earth, and breathed into his countenance the breath of life, and man was made into a living ſoul." The Lord determined above that He would form for Himſelf a miniſter, and Himſelf marked out what his miniſtry ſhould be. That miniſter whom, before he was made, the Lord foretold ſhould be man, hath now been made. Hath not, then, the office of his miniſtry, which the Lord alſo promiſed that man ſhould have, been with the ſaid man made perfect? for, as is above written, the Lord ſaith, conjunctively, "Let us make man, and let him preſide (*præſit*) over every creature;" whence it is inferred that in no inſtant of time could man have exiſted, but that in the ſame inſtant he preſided over every creature. Man, therefore, was made into a living ſoul, and was at the ſame time made the Prelate (*prelatus*) of the world, which could not have been if he had not had the prelacy (*prelatiam*) thereof. The miniſter, therefore, whom the Lord promiſed He would make hath now been made; and in like manner the office of his miniſtry, which was the prelacy of the world, hath been together with the ſame man made perfect; and ſeeing that the ſaid office without juſtice could not be, as above ſhown, it is thus clearly taught in the foregoing that, together with man and his office, in their creation juſtice alſo was created. And ſeeing that juſtice and the law of nature are proved to be of one ſubſtance (although accidental), of one quality and nature, and therefore *one*, we are moſt ſurely inſtructed that the law of nature was created in one and the ſame inſtant together with man; whence we are compelled to ſay that law and man are coeval, as were the firſt man, his reaſon, his will, and his memory, which powers, before they exiſted, the Lord did not expreſsly promiſe He would make, but when He decreed to make man after His own image, He at the ſame time, by way of incluſion, ordained theſe powers whereby man ſhould ſo be faſhioned. So, likewiſe, when He ordained the office of governing the world, He ordained at the ſame time the creation of that juſtice by which the world ſhould be governed; which thing He expreſsly and perfectly accompliſhed when He made man upright and poſſeſſed of a good will, as is above more fully declared. And thus at one and the ſame time was made the ſubſtance, namely, man, and the accident, namely, the law of nature, ſo infuſed into and

innate in man, that it can by no force be ſeparated from him, becauſe, as when the Lord ſaid, "Let the earth bring forth the green herb," the earth was imbued with the natural power of producing herbs (as ſaith St. Thomas); ſo, when the Lord had ſaid that the man about to be created ſhould preſide over the whole creation, when he was created he was endued in his creation with the office of the world's prelacy, and at the ſame time the law of nature alſo was made, and thus that office and law are innate in him, contemporary with him, and eternal; ſo that by reaſon of ſo great a union with, inherence in, and participation of human nature, that law hath from the ſaid nature drawn its name, and is called the Law of Nature, which law together with human nature, before they came into being, was by the oracle of the Divine voice predeſtinated, then with the ſame nature jointly created, and ſo, one by and through the other, they rule the whole creation. Concerning this law, alſo, the Canons before mentioned ſay that it began from the beginning of the rational creation that is to ſay, man; in which words this propoſition "from" is taken to be uſed not excluſively, but incluſively, as when it is ſaid in the Goſpel, "Poſſeſs ye the kingdom prepared for you from the foundation of the world," this prepoſition "from" doth not ſay that the foundation of the world was before the preparation of the kingdom for them that ſhould be ſaved. So, alſo, there was no time in which the human race was not ſubject to the law of nature. For after the creation of man the Lord ceaſed thenceforth to form new creatures. Thus, therefore, and in this faſhion was the law of nature eſtabliſhed, whoſe origin we have ſo diligently buſied ourſelves to inveſtigate.

Chap. XXXIX.

It is here ſhown how Juſtice remained in man, after that man had abandoned her.

WHEN now we call to mind that juſtice, which is no other than the law of nature, is the will that aſſigns to every man his right (*jus*), and that it hath been above laid down that the firſt man, allured by another will, abandoned her, we are compelled to aſk where juſtice went when ſhe thus ceaſed to dwell with man. But if the things above handled be firmly fixed in our minds, this which is now ſought becomes manifeſt without the inſtruction of a teacher. For the law of nature, abounding as it doth with certain diſtinct operations, and as it were powers, by which, while always itſelf one, it diſp ays in divers manners the effects of its virtue, we have likened, even as we do the human ſoul, to the image of the Divine eſſence. Wherefore ſince Holy Scripture frequently relates hat God, who fills the whole world with His eſſence, preſence, and power, is ſometimes preſent, ſometimes abſent, and yet He, from whom all things, in whom all things, and by whom all things are made and exiſt can nowhere be wanting; although ſo often as He cheriſhes us with the good things of His bounty, we ſay He is preſent with us, and when He withholds the

ſame from us, we complain that He is abſent; ſo juſtice alſo, which as the print of His footſteps we have likened to God, we ſpeak of as abſent from us, ſo often as we withdraw ourſelves from her laws; and yet ſhe herſelf doth never deſert us; but thoſe whom ſometimes ſhe cannot reward for their deſerts, ſeeing they have none, ſhe ceaſes not to puniſh for their crime; and thus is ever preſent with us, puniſhing, directing, rewarding, according as our deſerts require. For ſhe doth not, like bodily things, ſo occupy ſpace, that when deprived of the dwelling-place of man's will ſhe can no longer ſubſiſt within us; but, as God, whom the ſinner oftentimes caſts out of his ſoul, doth not run to and fro as a wanderer from that His hoſt, but ſtill abiding with him preſerves him in being, and, ſeeing He cannot reward him for his deſerts, doth not ceaſe to puniſh him for his offences, even ſo doth juſtice abide ever in man, and with man, never devoid of effect, but always ruling him, and paying him, one way or the other, the wages which he hath earned. And although the Laws define juſtice to be a perfect will, Anſelm, as before recited, doth not ſay that ſhe is will, but rectitude of will, whence indeed a will poſſeſſing rectitude is not called merely a right will, but rightly takes the name of juſtice. For, as ſaith St. Auguſtine, in the 14th Book, De Civitate Dei, "Will in all things, yea all will, is no other than particular wills are." Wherefore alſo he ſays—"What is deſire and joy but will in accord with thoſe things which we will for? And what is fear and ſadneſs but will in diſcord with the things which we would not have?" Thus therefore we too may ſay—What is juſtice but will in accord with a perpetual conſtancy in rendering to each and every man that which is his due? Wherefore as the paſſions aforeſaid ſeem to ceaſe in man ſo often as his will in accord or diſcord with them comes to a ſtop, ſo alſo virtue, which is juſtice, is ſaid to ceaſe in man ſo often as man's will ceaſes to be in accord with rectitude. But as the paſſions aforeſaid are not by man's diſcord with them altogether extinct in man, ſo neither is juſtice extinguiſhed, although ſometimes it ſtand not in man's will, and ſo worketh no merit for itſelf.

Chap. XL.

How the name of Juſtice hath a likeneſs to the name of Man.

BUT in order that theſe things may be made more clearly and openly manifeſt, let us conſider what follows. Man, as aforeſaid, is made after the image of God, and yet the ſtructure of the human body, which is compoſed of fleſh, nerves, and bones, beareth no likeneſs to God, who is a Spirit without fleſh, nerves, or bones; but becauſe the ſoul of man is the true image of God, therefore, by reaſon of the union of fleſh and ſpirit, whereby ſoul and fleſh are one man, the whole man is ſaid to be made after the image of God, as the Maſter of the Sentences teaches upon the Firſt Epiſtle of Paul to the Corinthians, chap. 11. So that power of the human ſoul which is called will, and oftentimes wills good

and often evil, is not always juſtice, which is virtue; but whenſoever the ſaid will firmly willeth juſtice, then by reaſon of its union with juſtice the whole will hath the name of juſtice, and may be called ſteadfaſt and perpetual, becauſe that which it willeth is ſteadfaſt and perpetual; but when it ceaſeth to will the ſame, then likewiſe it rightly ceaſes to be called juſtice. Wherefore ſince will and juſtice are ſo united, they both thus joined in one are entitled to be called juſtice, as fleſh and ſoul are entitled to be called one man. And thus juſtice returns and departs at the pleaſure of human will, although when once abandoned man recovers her not, unleſs when the grace of the Firſt Giver, who only juſtifies the ungodly, grants her to him again. Nevertheleſs, though ſhe thus changes her place with man, ſhe yet abides for ever a conſtant and perpetual virtue, granted to man anew, ſo often as God gives him the will to recover once more her whom he had loſt; and will, which alone is power, varies its actions in divers manners at its own pleaſure.

CHAP. XLI.

See how original juſtice differs from natural juſtice.

ONE thing ſtill remains to be explored, which thus far darkens, as it were with the ſhadow of a cloud, the perfect notion of juſtice. For juſtice, which included the grace that maketh acceptable, was in her beginning of ſo great efficacy and vigour, that if man had kept her he had been free from all trouble, and full of wiſdom, and could not have died, but, all the grievouſneſs of corruption being put away, he might in his own faſhion have attained to equality with the angels. This doth not ſtand forth as the juſtice whoſe birth we are declaring; wherefore we are conſtrained to confeſs either that there were two kinds of juſtice created, or that this one to which we are doing honour is not conſtant and perpetual, ſeeing ſhe hath loſt ſuch mighty benefits which her virtue would have procured her. But far be it from us to ſay that there were two kinds of juſtice created; and no leſs are we confounded if we lay upon juſtice the ſin of mutability or inconſtancy. We know, indeed, that the One God created after His own likeneſs one man, one juſtice, and ſo likewiſe one law of nature in the form which we have diſcloſed. But that juſtice, yea and that man, He bleſſed abundantly in their beginning with ſuch an affluence of His grace, that if man had kept the ſame juſtice undefiled and unimpaired, he would have been borne without the coſt of troubles to the aforeſaid equality with the angels. But man, alas! abandoned that juſtice, and ſo was deprived of the grace aforeſaid, and therefore wounded with ignorance, malice, infirmity, and luſt. For in the uprightneſs of this juſtice, which was the gift of ſupernatural grace, man was made; and ſhe worked in him the ſubjection of his reaſon to the ſupernatural God, ſo that his body alſo was perfectly ſubdued to his ſpirit, and

his lower powers to his reaſon. From whence, according to Auguſtine, the love of man to God was then undiſturbed and was true love (*charitas*), and ſo his condition alſo was holy and above nature. For if his ſtate had been only natural, it would have remained the ſame even after ſin, becauſe, according to Dionyſius, even in the demons the natural faculties given remained entire after ſin, which was not the ſtate of man after his fall. For he, feeling the motion of his fleſh to be diſobedient to his ſpirit, was confounded by his nakedneſs, and ſo received a puniſhment correſponding to his diſobedience. This juſtice, ſo long as grace ſo abounded, we have called original juſtice; but when bereaved of this great grace, we ſuffer it not to be called original, but juſtice only. Are we, then, from this taught to confeſs that there were two kinds of juſtice, or can juſtice thence be branded with the vice of mutability or inconſtancy? Nay, not ſo, for ſhe is ever the ſame in kind, although by man's neglect ſhe be now deprived of the benefit of ſo great grace. What doth it take from the nature of chaſtity that chaſtity once ſpoiled is not virgin chaſtity? The grace which the virgin poſſeſſed hath departed, and ſo the merit of her chaſtity, although ſhe ſtill remain continent, is diminiſhed; yet is the virtue of chaſtity, in reſpect of the genus of virtue, ever the ſame in any celibate woman as in a virgin. So alſo what is called original ſin, which is deſcribed in our firſt parent as "the want of original juſtice, together with the duty of poſſeſſing it," was nothing elſe with reſpect to the genus of ſin than an averſion from unchangeable good and a turning towards changeable good, even as all actual ſin likewiſe is, although one ſin be heavier than another; but that firſt one, becauſe it was the origin of all the ſins of the human race, concerning which the Apoſtle ſaith (in the 5th chapter to the Romans), "By one man ſin entered into this world, and death by ſin," is deſignated by the name of original ſin; and yet that and every mortal ſin are of equal badneſs in reſpect of the mode and kind of ſinning. So Saul, when he was made Paul, was the ſame man as before, but in a different ſtate of grace, and ſo he changed his name together with his character; ſo likewiſe Peter, who at firſt was called Simon Barjonas, when grace was given him, changed alſo his name. Thus juſtice alſo is not changed, although it acquire different names, according to the abundance of the grace given to it; for, as the Canons above quoted ſay of the law of nature, juſtice began from the beginning of the rational creation, and hath never been changed, but abides immutable.

Chap. XLII.

Wherefore the Law of Nature is called Divine, and daughter of the Divine Law.

WE have now, methinks, ſo thoroughly ſearched out the nature and efficacy of the law of nature, that there remains for us no more juſtice to be done to its power, dignity, or virtue. Nevertheleſs, inaſmuch as Iſidore, in his Book of Etymologies, and likewiſe the Canons, gives to that law the name of *Jus Divinum*, we too have ſaid above that ſhe is the daughter of Eternal Law. But whence it is that theſe high titles belong to her is not yet unfolded; and if we ſay that they came to her from her creation, as we have diſcloſed it, we thereby decorate all created things everywhere with like honours, which is not to be thought of. We muſt, therefore, ſearch out ſome other cauſe why the law of nature is to be graced with theſe names, or elſe leave theſe things, as before, to be troubled by the clouds in which juſtice is enveloped. We judge it, therefore, neceſſary to inquire firſt of all what that Law Divine is whoſe daughter we have called the Law of Nature, and when we know this thoroughly, we ſhall perhaps apprehend in like manner why the law of nature is named a Divine law. Now, St. Auguſtine (Contra Fauſtum, book xxii.) ſaith thus, "That is called ſin which is done or deſired contrary to eternal law, and by eternal law I mean Divine Providence." From theſe words it is evident that the Saint taught Divine Providence to be divine law, ſeeing that eternity does not differ from divinity, nor yet divinity from eternity. What, then, this Providence is, which Auguſtine thus calls the law of God, we will further aſk. Boethius, in his book of the Conſolations of Philoſophy, ſaith thus—"Providence is the Divine reaſon itſelf ſeated in the ſupreme Governor of all, whereby it diſpoſes all things." If it diſpoſe all things, it follows that it diſpoſes the law of nature. Boethius, however, diſcloſes the thing much more openly when he ſays in the ſame book, "The generation of all things, and the whole progreſs of changeable natures, and whatever in any way is ſubject to movement, hath its cauſes, order, and form from the ſtability of the Divine mind. This latter, tranquil in the art of its own ſimplicity, lays down a manifold method for the ordering of affairs, which method, when it is beheld in the very purity of the Divine intelligence, is called Providence." With theſe agrees Damaſcene, in the Second Book of the Sentences, when he ſays, "Providence is the will of God, whereby all things that are acquire a fitting conduct;" from which things we are now clearly taught what that Divine Providence is which Auguſtine affirms to be Divine law, and ſo we have found the mother whoſe daughter we have aſſerted the law of nature to be. But why this latter ſhould be called the daughter of the former, or have the name of Divine Law, hath not yet been ſhown. Concerning theſe things, therefore, it ſeems the fitting time to ſeek the counſels of ſome of our forefathers. Now St. Thomas (in Primâ Secundæ, Queſtione lxxxxj., Articulo ij°.) ſaith thus: "All things

which are ſubject to Divine Providence partake of the eternal law in ſo far as they have inclinations toward their proper actions and ends; and among the reſt the rational creature is ſubject in a certain excellent manner to Divine Providence, in ſo far as it is itſelf partaker of the faculty of providence, as providing beforehand for itſelf and for others; whence there is in it a partaking of the eternal reaſon, whereby it hath a natural inclination to its rightful action and end, and ſuch participation of the eternal law in a rational creature is called the law of nature; and thus the law of nature is nothing but the participation of the eternal law in a rational creature." So ſpeaks St. Thomas. And ſince men by grace of participation of Divinity, which participation includes the grace that makes acceptable (*gratum*), are counted worthy to be called, not ſons of God only, but gods, (for John ſaith in the Goſpel, "As many as received Him to them gave He power to become the ſons of God;" and the Pſalmiſt, "I ſaid, Ye are gods, and all of you children of the Moſt High;" and the Apoſtle to the Romans, chap. viii., "Whoever are led by the ſpirit of God, they are the ſons of God;" and in like manner in the Firſt to the Corinthians, chap. vi., "He who is joined to God is one ſpirit with Him;" wherefore Boethius alſo, in the 3rd book of his treatiſe aforeſaid, ſaith that, "although God be by nature one, nothing hinders but that by participation of Him there ſhould be gods innumerable"), it is conſequently to be judged that, ſince the law of nature ſo partakes of the eternal law as to be itſelf, as ſaith St. Thomas aforeſaid, nothing elſe but a participation of that law, it ſhould not only be called the daughter of the law Divine, but is worthy to bear the name of Divine law, by way of imitation, indeed, and not of equality. Oh, how great a thing is this participation of eternal law! ſeeing that not only doth the law of nature adhere to and unite with the Divine law, as man with God, but that whatever is nature's law is a partaking of the law Divine, from which I will not ſay that the law of nature itſelf flows as a ſtream from its ſource, but as a bay is of the high ſeas, it is a part of the abyſs of higheſt Deity. For the Civil Laws ſay that the offspring is a portion of the mother's entrails, and yet the offspring hath a portion from the father. But this law of nature hath nothing toward the full completion of its nature from any other ſource but that which hath been poured forth from the illimitable ocean of eternal law; nor is it a part of the Divine law like a quantity which, when taken from a quantity, leaves that leſs from which it is taken, but, like fire kindled from fire, without diminiſhing the light of the Divine law, it renders it the brighter to us through the medium of itſelf. Thus, therefore, the law of nature is the law Divine, ſince all that it is is Divine, and daughter of the Divine law, ſince the latter hath brought forth, and is ever bringing forth, the whole of it. Theſe are the two great lights ſet in the firmament of Heaven—that is, in the Church of God. The greater light is the Law Divine, which rules the day of our ſpiritual life, wherein we contemplate God, and enjoy Him here on earth. The leſſer light is the Law of Nature, which rules the dark night of this our temporal converſation, wherein we ſojourn far from the Lord, doing juſtly in this life by His grace alone.

CHAP. XLIII.

As the moon is to the ſun ſo are human laws to the Divine Law.

BUT, alas! out of what hath been concluded we perceive certain black exhalations ariſe, which, unleſs they be ſcattered by the warm rays of the ſun of truth, will grow into a thick cloud, which will darken with its ſhade all that hath now been aſcertained. For we ſaid above that human cuſtoms and conſtitutions are ſubject to the rules of the law of nature, and having iſſued from its boundaries do ſo partake of its nature, that, if not ratified thereby, ſuch cuſtoms and conſtitutions deſerve not to be called laws, but rather corruptions. And we have now ſaid that the law of nature itſelf proceeded from out of the bounds of the law Divine, ſo that, I will not ſay like a daughter from the mother, a part of whoſe entrails ſhe is, but like light from light, ſpringing from the law Divine, it becomes together therewith a Divine law; from which things we are rightly taught that in the Divine law conſiſts the plenary power and virtue of all human laws, ſeeing that there exiſt no other and no more human laws than cuſtoms, conſtitutions, and the law of nature, and that theſe laws have no power which the law Divine hath not. But can anything involve us in painful difficulties more inextricably than this? For if theſe concluſions be ſound, all human laws ſeem uſeleſs, inaſmuch as they did and can do nothing but what the Divine law doth and can do. If, therefore, this Divine law be known, then all other laws are known, and it alone ſuffices for the governance of the univerſe; nor is there any good judgment of men which hath not been formed thereby, for it corrects every error, and reproves every evil; which is indeed what the Canons ſay of it in theſe words: "When God commands anything to be done contrary to the manners and cuſtoms agreed upon among any people, if it had never been done there, yet muſt it be done, if omitted it muſt be introduced, if it had not been ordained, it muſt be inſtituted," (viii. Di. C°. *Quæ contra Mores*) Wherefore then have the founders of the Civil Laws laboured with diligence ſo great, and why, with no more reaſon, do thoſe men afflict themſelves who in the ſtudy of thoſe laws make lean their fleſh by ſo many ſleepleſs nights? And wherefore do the wiſe judges of France conſume ſo many years of their pilgrimage in the ſtudy, not even of the Civil Law, but of the laws of that kingdom? But, above all, if theſe things be true, it would be a thing to wonder at, why they who ſtudy the laws of the kingdom of England, which are merely inſular, and the knowledge of which thoſe ſtudents ſcarcely ſo far acquire by twenty years' lucubrations, as to deſerve to be ſelected for the loweſt degree u ually granted in thoſe laws, paſs ſo many years thus vainly; (while, what is more, upon t king that degree, they have to pay for the ordinary expenſes, which the ſolemnity requires, not much leſs than two thouſand crowns;) when by much fewer years' ſtudy, and at leſs expenſe, they might have gained a competent knowledge of the Divine laws, and have advanced to the higheſt degrees in the ſame, along with which, as it ſeems, they would have become well

verſed in all laws, and have obtained the due degrees therein. In like manner have we, too, ſearched out in vain the nature of the Law of Nature; now that we perceive it to be uſeleſs to us, ſince the Divine Law teacheth everything, and doeth everything in perfection which the law of nature can do or teach.

But ſhame upon us! How dull and diſgraceful it is to think ſuch things! Doth not the moon, which is an opaque body, receive from the ſun all the light ſhe hath, wherewith ſhe illumines the night and ſhows the way to the traveller, and yet without the medium of the moon the ſun doeth it not, which by his own courſe cauſes the night, and therein darkneſs and not brightneſs; and yet in the ſun, and from the ſun, is all the light which thus the moon gives forth? And do not all the other planets in like manner have all their ſhining from the ſun, and all the ſtars likewiſe, any one of which differs from another in brightneſs by reaſon of his influence? Surely he robs the heavens of all the neceſſity, uſefulneſs, and beauty of theſe bodies, who takes away here from earth thoſe laws of man which ſhine and differ like the ſtars. And hath any aſtrologer ever perfectly underſtood the courſes of the other ſtars by conſidering ſolely the ſun's path, and knowing his riſing and ſetting? Nay, the zodiac, that oblique circle, teaches us the ſun's track, but does not at all decide the turnings and returnings of the orbits of the other planets. For every planet hath its functions within its proper ſphere, wherein it developes the powers of its own nature, and yet eſcapes not the laws of the ſun, in which all the planets partake, not diminiſhing his brightneſs. Thus the loweſt orders of celeſtial ſpirits partake of the gifts and graces of the higheſt angels, and although the inferior receive through the ſuperior the grace of illumination, whereby they ſhine themſelves, yet let it not from this be thought that they are not neceſſary to make up the perfection of Heaven. Again, if the Lord ſaid, "Upon theſe two commandments hang all the Law and the Prophets;" and yet Himſelf taught ten Commandments, did He mean to ſay that He had added ſuperfluous laws? Or when He ſaid, "Whatſoever ye would that men ſhould do to you, do ye to them alſo, for this is all the Law and the Prophets," did He thereby lay down that the laws of the New and the Old Teſtaments ſo laviſhly ſet forth, and in like manner the teaching of the Prophets, are not ſuited to us, or not neceſſary for our ſalvation? Far be it from us to toſs about in ſuch frivolities, and to deviate from the right way into ſuch twiſts and turnings of error; for, like as the moon and the other ſtars receive from the ſun their brightneſs and the other virtues whereby they diſplay their effects to land and ſea, and yet they who ſearch into the nature of the ſun may remain ignorant of the courſes of the other ſtars; ſo alſo all laws of men acquire their force by influence of the law Divine, whereby they put forth the effects of their operations in divers manners toward all the race of man; and yet they who are ſkilled, however profoundly, in the knowledge of the Divine law cannot, without the ſtudy of human laws, be learned in human laws. So, likewiſe, they who hear the two Commandments on which hang all the Law and the Prophets, and who do not do to others what they would not have done to themſelves, do not therefore

know or underſtand all the Law and the Prophets, although from theſe few Commandments depend and proceed all things that are written therein. From which things it is now clear that all human laws are, as it were, inſtruments whereby the Divine law developes its virtues in human actions, and that they ſtand related to the law of God as the moon to the ſun, as the ſteadfaſt eye to the light, nay rather as fate to Eternal Providence; concerning the relation and compariſon of which Boethius, in the Fourth Book of his Conſolation of Philoſophy, ſpeaks thus: "As the proceſs of reaſoning to the intellect, as that which is being produced to that which is, as time to eternity, as the circle to the centre, ſo is the ſhifting ſucceſſion of fate to the ſtable ſimplicity of Providence."

CHAP. XLIV.

In this chapter we ſeek and ſhow what are the ends of Divine and human law.

BUT in order to make more manifeſtly and perfectly clear all that we have written above, it ſeems neceſſary to demonſtrate what the ends are toward which the effects of Divine and human law ſeverally tend; for when theſe are made plain, the ſubjection whereby the law of nature is ſubordinated to the Divine law and the whole ſum of the powers of the law of nature, will alſo be known in all their fulneſs. Now it is certain that the law of nature can have no other operation than to diſpoſe man to virtue. For inaſmuch as the office of a king, to whom, as St. Thomas ſays, the higheſt charge of government in human affairs is committed, hath this only function, to make men virtuous, yea and that is the end and object of every legiſlator and inaſmuch as every polity is corrupted if it be turned aſide from this end, as the ſaid Saint in his book De Regimine Principum profuſely demonſtrates, we are clearly inſtructed that human laws can produce no other effect than to direct man to thoſe virtues whereby peace, which is the unity of human ſociety, and love, which is the bond of peace, may be nouriſhed and preſerved. The perfect exerciſe, alſo, of the virtues, as ſaith the Philoſopher in the 7th of the Politics, is happineſs, that which all the Peripatetics call the *ſummum bonum*. From which things we are bold to ſay that virtue is the end of the whole effect of the law of nature and of every human law. This alſo may in a manner be adjudged to be the end toward which the movement of all human affection primarily tends. For, as Boethius ſays in the 3rd book of the Conſolation, there is a deſire of good naturally implanted in the minds of men, ſo that none can deſire anything other than what is good, unleſs miſleading error draw him away to that which is falſe. And ſince the Philoſopher, as alſo St. Thomas in the 1ſt book of the Treatiſe aforeſaid, ſay that the virtue of every particular thing is defined to be that which makes the poſſeſſor of it good, the man who ſeeks after the good alone cannot but ſeek after virtue, unleſs he be ſeduced by error; from

which it follows that human law and human desires have one and the same end, that is to say, virtue, which renders man good, and which is the goodness of humanity, concerning which end the Philosopher speaks, in the 2nd and 3rd of the Metaphysics, when he says that the "end" and the "good" are convertible terms. But this end is not the ultimate end to which the desire of man leads him; for it is certain that man is created for a further end than this, seeing that there exists in him by nature a longing which cannot be satisfied by virtue, nor by any excellence which can be here acquired, nor by any of this world's goods; for though one man were to possess all these things combined, yet since here he can have no assurance of retaining them, his mind cannot be at rest from further agitation and longing; and nevertheless the movement of his desire doth not go on to infinity, because then it would have been a vain creation, as things infinite cannot be traversed; neither do we doubt but that man's desire is capable of being fulfilled, seeing that the Prophet says: "Who fulfils thy desire in good things." But whatsoever that be which fulfils man's longing, that assuredly is the ultimate end of human desire, and that is the end which we seek; nor is it allowable to doubt that man hath been fashioned for such an end. This end, therefore, let us follow out with all our efforts, to know what it is, and let us not be slow to inquire what law may guide us thereto. Now, Boethius, in the 3rd Book aforesaid, thus addressed his readers: "All the cares of mortal man bestowed upon the labours of manifold pursuits proceed, indeed, by divers paths, but yet strive to reach one only end, namely, beatitude; and that is the good which, when a man hath attained, he can desire nothing beyond it." These are his words. And what this beatitude is he defines in the same place, when he says, "It is evident that beatitude is a condition made perfect by the combination of all good things. What, then, can a man desire more when he hath obtained all good things?" But St. Thomas, in the aforesaid 1st Book, says that beatitude is the ultimate end of desires. Is it not, then, that ultimate end of which we are in search, wherewith the Lord fulfils all the longing of man? Surely we have now found the final end to which all the desire of man tends, and with which it can be satisfied, that is to say, beatitude, which, as saith the same Saint in the 3rd Book of his Treatise aforesaid, consists in the Divine vision and that alone. But to this end man cannot attain by means of the law of nature, which expends all its strength upon the acquisition of virtue here on earth, while this end cannot be found but in heaven. For thither the law of nature ascends not, having fixed the utmost limits of her dominion here in earth, (witness that saying of the Lord, "No man hath ascended into heaven save He who came down from heaven"); but the Divine law, to which, as we said before, the law of nature is subject, came down from heaven; wherefore we believe that this law alone, which we have named before the Providence of God, can conduct us thither; for under the name of Providence we speak of the entire law Divine as well of the New as of the Old Testament, as under the name of love the Apostle signified the fulness of law; and although not by law only, but rather by grace

we attain unto beatitude, according to the Apoſtle's ſaying, "The grace of God is eternal life," nevertheleſs, when we call the law of God *Providence*, we by no means relegate from this concluſion the guidance and help of Divine Grace, as well as of Divine Providence. But this law is that Wiſdom which reacheth from end to end mightily, and ſweetly doth order all things. She is a teacher of the diſcipline of God, and a chooſer of His works. She teacheth ſobriety, and wiſdom, and juſtice, and virtue, than which nothing is more profitable in the life of man. Wherefore the Law of Nature hath no virtue but what ſhe hath ſucked from the breaſts of her who hath her dwelling with God, and we by her poſſeſs favour with the multitude, and honour with the elders, and immortality, and everlaſting memory. (Wiſdom, chap. viii.) Now have we found not only that ultimate end of human deſire of which we have been in ſearch, but alſo the Law whereby we may embrace and hold faſt that end, if we follow the admonitions of the ſame.

CHAP. XLV.

The ends of the intention acting through the intellect are two.

NEITHER let the reader marvel if we lay down two ends of human deſire, a firſt, that is, and a laſt: the firſt, virtue informed by grace, to which we ſtrive with all diligence to attain, ſo that by merit thereof we may be able to reach unto the ultimate end, that is to ſay, beatitude, as unto the crown and prize of all. For in like manner St. Thomas, more than once in the aforeſaid book De Regimine Principum, lays down two ends of human purpoſe; and the ancients alſo did the ſame, marking the firſt end by the name of Τελος, and the ſecond by that of Σκοπος. As, when a man for a reward promiſed ſhoots at a mark, the firſt end of his intention is to hit the mark with his weapon, for which he prepares the bow and ſtring, fits the arrow, bends the bow, draws it, and applies to this end the whole ſtreſs of his endeavour, inſomuch that he ſeems in a manner to forget the farther end, that is, the pecuniary profit for the ſake of which he does all this; and yet, if he ſtrike the mark and ſo attain his firſt end, he claims without heſitation his ultimate end, that is, the payment for the ſake of which he took all this pains and trouble; ſo every man, though he be many times led away by error, firſt hath in his purpoſe that good end which he can only reach by virtue informed by grace, namely, to be a good man, knowing that if by the intervention of Divine grace and faith in Jeſus Chriſt he obtain this end, he will alſo, as it were of merit, attain unto the farther end which he ultimately ſets before himſelf, namely beatitude. Concerning theſe two ends the Pſalmiſt ſpoke when he ſaid, "Who hath made thine ends peace." For by the firſt end—that is, virtue—ſuch peace is gained as can be got *in viâ*, and by the ſecond, everlaſting peace is poſſeſſed in man's native country. In like manner the Apoſtle is thought to have ſpoken of theſe two ends when he ſaid, "But now being made

free from ſin and become ſervants unto God, ye have your fruit unto holineſs, and the end everlaſting life" (Romans, chap. vi.) For virtue, which we called the firſt end, is the fruit whereby we are good and holy; and beatitude, which we laid down as the ultima e end, is eternal life; for that is the final end, the end of which the Philoſopher ſays that "he who acts by the intellect works for an end." And both theſe ends the Lord taught in the Goſpel, when upon the Mount He eight times over promiſed beatitude in reward for as many virtues. And although the beatitude which man ſeeks be the ultimate end to which the Divine law leads him, yet is it nevertheleſs not the ultimate end of the Divine law, which end conſiſts in God, and contains in it nothing which is not God; nay, God himſelf is the end and the beginning of His own law, being without beginning or end. Since then we have ſhewn that the Law of Nature with Divine grace accompanying it ſerves towards th: firſt end of human deſire, namely, for a man to become virtuous, and ſo good; and that the Divine Law hath been made by the Lord to conduce to the ultimate end of man's longings, namely to be happy (*beatus*), let us now ſee what reſults from theſe two ends.

CHAP. XLVI.

Here the Writer ſhows by what kind of ſubjection the Law of Nature is made ſupplementary to the Divine Law.

ST. THOMAS, in the aforeſaid firſt book, De Regimine Principum, ſaith that every kind of rule is the more exalted as it is ordained towards a more diſtant end; and the perſon to whom the ultimate end belongs is always found to command thoſe whoſe operations are directed towards the ultimate end. Thus, the captain of a ſhip, to whom it belongs to ſettle the navigation, and who has in his charge the ultimate end of the ſhip, namely, to be brought ſafe into port, commands the carpenter, who builds the ſhip and repairs its damages; and the ſoldier gives orders to the ſmith as to what arms he ſhould make, and how he ſhould make good defects, if any have happened in the making of them. So alſo the captains and rulers in the law Divine, which is ordained for a further end than human law, ought to rule the captains and rulers in human law, and correct their defects when they occur, and cauſe them to be amended. All this is collected in brief from the writings of St. Thomas aforeſaid, in the ſaid firſt and following books of his ſaid treatiſe. In like manner the Philoſopher, in the 1ſt book of the Ethics, ſays that the architectorial art is preceptive of all other arts. But the great lawgiver, Moſes, teaches the ſame much more openly in Deuteronomy, chap. xvii., when he ſays, "If thou perceive that there is with thee a hard and doubtful matter of judgment between blood and blood, between plea and plea, between leproſy and no leproſy, and thou ſeeſt that the words of the judges within thy gates are diverſe, ariſe and get thee up into the place which the Lord thy God

ſhall chooſe; and thou ſhalt come unto the prieſts of the houſe of Levi, and to the judge who ſhall be in thoſe days, and thou ſhalt inquire of them, and they ſhall judge thee the truth of judgment, and thou ſhalt do whatſoever they who are over the place which the Lord ſhall chooſe ſhall ſay unto thee, and whatſoever they ſhall teach thee according to His law; thou ſhalt follow their ſentence; thou ſhalt not decline therefrom to the right hand nor to the left." Lo, how the law which is ordained for the farther end governs the law which directs men to the firſt end, and how the Divine law hath commanded them who rule thereby to direct the rulers according to human law! Thus in every caſe the ſuperior governs the inferior; thus do things celeſtial miniſter virtue to things terreſtrial: the heaven waters the earth, and makes it bring forth and bud: thus rational beings command the brutes, ſentient beings make uſe of vegetables, and vegetables are nouriſhed by things without organic life; ſo that there is nothing loweſt in the ſcale which doth not ſubmit itſelf to ſomething ſuperior, except it be raſh man, who in his lawleſſneſs often abandons and diſturbs the order of the univerſe. Wherefore, ſince neither human law nor the judge who pronounces ſentence in accordance therewith can paſs by the mandates of the law Divine, it appears to be neceſſary for the ſecular judge that he too be well verſed in the Divine laws, and that in doubtful matters he follow the decree of the ſupreme Pontiff, ſeeing that the latter is himſelf bound to ſhape his decree according to the judgment of the ſaid laws, and can never in any matter lawfully go counter thereto. Wherefore alſo the Civil Laws ſay that juriſprudence is the knowledge of things Divine and human, the ſcience of the juſt and the unjuſt, becauſe he aſſuredly underſtands not human laws who is wholly ignorant of the Divine. Not that on this account a ſecular judge is required to be learned in things Divine like a theologian; nor is a ſubject in things temporal required to have a perfect knowledge of human laws like the judge who will give judgment concerning them, although ignorance of the law excuſes no man; but it is enough for a ſubject that he acknowledge the commands of the law, as for a ſervant the will of his lord, while the higher myſteries (*ſacramenta*) of the law remain for thoſe who are learned in the law. For thus the laws are often more meritoriouſly obeyed by thoſe who know little than by thoſe who know much.

CHAP. XLVII.

The End.

FROM the ends of the reſpective laws which we have ſet forth there now reſults the fulleſt recognition of all that we have ſought after—that is to ſay, by what manner of ſubjection the law of nature is added by way of ſupplement to the law Divine, and thence the ſum and ſubſtance of the whole force of the law of nature is thoroughly laid open.

Wherefore now, together with thoſe ends, we put an end to this work, and we cloſe this little book concerning the nature of the Law of Nature, proteſting always that, although in this Treatiſe we have often extolled the law of nature with no mean expreſſions of praiſe, there was not and is not any notion intended therein that the ſaid law, bereaved as it is of the protection of original righteouſneſs, is ſufficient, or, in that its deſtitution, ever was ſufficient to juſtify man or his acts, ſo that by the merits of that law which is only natural a man could deſerve a ſupernatural reward, or could without grace do anything whereby he might be advanced to eternal life. And if it be thought by any that we have written anything contrary to this in what hath gone before, it hath proceeded from the clouds of our ignorance, and not from the determination of our will. Wherefore, if there be any ſuch thing (which God forbid), we hereby retract it, ſubmitting ourſelves, as well concerning the foregoing as in all things that we have written or ſhall write in this little book, to examination of the Church, and to her judgment and cenſure.

CHAP. XLVIII.

Continuation of this Treatiſe to that which follows.

AND now let not the readers of the preceding pages be ſurpriſed that their Author, having undertaken to diſcuſs a queſtion of ſuch vaſt difficulty, hath, as though forgetful of his taſk, ſet himſelf ſo obſtinately upon the ſearch after a Law which might ſuffice to reſolve it. Nor let the fact diſturb them that a man about to go upon a journey haſtens his ſteps all the more the longer and the more difficult the road is which lies before him. For no artificer is ever ſo headlong and reckleſs as to undertake a work until he have prepared the inſtrument whereby to make it, and have fitted it to the fabric which he carries in his mind. Thus alſo the Writer of the foregoing, following the method of the artizan, hath not ventured to encounter the painful efforts of the arguments that lie before him, until he found a Law whereby they might be rightly weighed and diſcuſſed, which being now found, he advances ſecurely toward the battle array of the controverſy aforeſaid; and thereupon he begins as follows another Book, which ſhall be entitled, "Of the Law of Succeſſion in Superior Kingdoms."

END OF PART I.

SECOND PART.

CONCERNING THE RIGHT OF SUCCESSION IN SUPREME KINGDOMS.

CHAP. I.

Juſtice is choſen and conſtituted Judge in the propoſed caſe.

THE queſtion propoſed, the ſolution of which we ſeek, ſets forth the caſe of three claimants contending for the right of ſucceſſion in one kingdom; and in a Treatiſe of no moderate ſize, now ended, we have unfolded the law by which that queſtion may be ſolved, and the litigation in this cauſe ſettled. A Judge, however, by whoſe decree theſe things can be brought to paſs, hath not yet been found; and to a man about to build an edifice, what will be the good of an axe without a hand to wield it, or a waggon without a beaſt to draw it? The artificer is he who builds a houſe by means of ſuch implements. Of no greater uſe to litigants is the law by itſelf, if there be not at hand a diſcerner of equity who knows how to decide law-ſuits by the rules of the law. It is, therefore, neceſſary for the parties in this caſe to come before a judge, if they would gain the peace they ſeek by obtaining a knowledge of the truth. For it is only a judge who can by his authority reveal truths that lie concealed, and untie by deciſion of law the knots of litigation. Let us now therefore inquire what competent judge can be choſen in this diſpute. The Civil Law ſays that Juſtice is "a conſtant and perpetual will aſſigning to every one his right;" now ſhe who aſſigns to every one his right, can without doubt aſſign their rights to the diſputants in this caſe alſo. Juſtice is alſo a judge, for a judge is ſo named from pronouncing judgment (*Judex quaſi jus dicens*), and ſhe pronounces judgment, ſince, as the Laws ſay generally, judgment is given by her; ſhe is indeed herſelf the judge of all human actions, ſo conſtituted by the Supreme and Almighty Lord. Hence, no more powerful judge, nor, in our caſe, more ſuitable can be thought of than ſhe is. Nor is it any obſtacle to her power that women are by law excluded from the judicial office; for although the word juſtice (*juſtitia*) be of the feminine gender, ſhe herſelf is not a woman, nor of the female ſex; for ſex hath no place in virtues any more than in ſpirits. Let, therefore, the parties aforeſaid draw nigh to Juſtice, and let them effectually aſk of her, that ſhe condeſcend to decide their quarrel by her ſentence. Truſt-

ing, therefore, to this ſound advice, they made good haſte ſo to do, and came to her, and with faces prone on the earth, addreſſed her in theſe words: "O greateſt of Judges, on whom the Lord hath conferred not only, as on man, the power of ruling the globe, but alſo the power of ruling man himſelf in civil ſociety, take compaſſion upon the world now wandering aſtray beneath the clouds of our queſtion, and agitated, like a troubled ſea, by no ſmall tempeſt. Clear up by thy decree the minds of men darkened by their ignorance of this queſtion, and unlock the truth of this riddle. Come, come and judge our caſe, and by thy deciſive ſentence diſſolve this litigation. For in thee we agree as our judge, and we appoint thee arbiter in this cauſe." Juſtice, upon this, embracing theſe things with benevolent mind, and feeling a pious compaſſion for the world toſſed about beneath the gloom of this ignorance, touched alſo by the calamity of the inhabitants of the kingdom for which the ſaid parties were contending, whom ſhe ſaw trembling with fear under their unſheathed ſwords, at length took upon herſelf, and that cheerfully, the burden of judgment in this cauſe; then, proclamation having firſt been made in accordance with her juriſdiction, after the manner of law courts, ſhe aſſigned to the parties a term for ſetting forth their petitions in form of law; upon the arrival of which, and ſhe herſelf being ſeated in a place aſſigned as judgment-ſeat, the aforeſaid parties, to wit, the Daughter, the Grandſon, and the Brother of the King, appeared in perſon before her, and ſeverally petitioned that the kingdom of the deceaſed king might be adjudged to him or her by hereditary right. And firſt the King's Daughter, addreſſing the Judge, began as follows.

CHAP. II.

The title of the King's Daughter.

MOST prudent of Judges, Ruler of the world! The late moſt illuſtrious Prince, King of the Aſſyrians, monarch of the whole of Aſia Major, my lord and father, who in temporal matters acknowledged no ſuperior, departed this life having no ſon, and left, as heir of his whole kingdom, myſelf his only daughter; whereat my ſon, the offspring of my womb, now preſent before you, being grieved, had the boldneſs, in deſpite of nature, to exclude me from the kingdom, and to invade and poſſeſs, or rather uſurp, it as his own. In like manner, alſo, which is ſtill more ſhocking, my uncle, who is alſo now preſent before thee, has done me like wrong. He ſuffers not even my ſon to enjoy the ſaid kingdom either by mine or his grandfather's title. What, therefore, is the law in this caſe, we three, by mutual conſent, entreat thou wouldeſt deign by thy ſentence to define. It were in truth a thing more wondrous than any miracle, if a grandſon by a daughter ſhould, in the lifetime of his mother, and to her excluſion, ſucceed to the patrimony of his grandfather. But it would be ſtill more monſtrous if, in the lifetime of the daughter of the deceaſed, and

of that daughter's ſon, the brother of the departed king might lawfully poſſeſs his empire. Am I alone of womankind excluded by law from inheriting from my father, or ſhall the magnitude of the inheritance avail to diſinherit the offspring, and endow my father's brother with my father's patrimony? Surely this would not be conſonant to nature, but moſt alien from the Divine law. For in the book of Numbers, chap. xxvii., the Lord ſpeaks thus: "When a man ſhall have died without leaving a ſon, the inheritance ſhall go to his daughter;" by which ſentence the Lord excludes not from the daughter's ſucceſſion either the higheſt ſummit of rule, or any dominion of whatever magnitude; but decides that a woman is as capable of receiving a kingdom as any private domain. Wilt thou, then, O diſcreeteſt of judges, heſitate to ſanction what the Lord hath ſanctioned? The law which the Lord hath declared lies open before thee moſt clear. Do, therefore, according to the faſhion which was ſhown thee in the Mount, and be not ſlow to end this quarrel by thy decree. Theſe things the Son heard with eyes caſt down upon the earth; then lifting them up toward the Judge, he addreſſed him as follows.

Chap. III.

Reply of the King's Grandſon to the firſt allegation of the King's Daughter.

MOST truly, O beſt of Judges, has my moſt dread miſtreſs and mother ſtated throughout her ſpeech the truth concerning the matter of fact which is the exciting cauſe of this diſagreement. Would that ſhe knew the ruling of the law as well as ſhe knows the truth of the facts! Thou wouldſt not then, I think, be troubled with the ſifting of this caſe. It is ignorance of law and not of fact which urges her on to this ſuit, for, without an adviſer, the pious ſimplicity of a woman cannot diſtinguiſh the difference that exiſts between the rights of ſucceſſion to a kingdom and the rights of ſucceſſion to a private eſtate. Human law doth not regulate a public office as it doth a field, nor a public as a private function. For if my intelligent mother would revolve in her mind how theſe things are, ſhe would of herſelf, I ſuſpect, very ſpeedily withdraw from this ſuit, and would not reproach her ſon as degenerate, although he now burn to enter upon and govern his grandfather's kingdom, to which it is not lawful for his mother to ſucceed. But the lowly office and the private ſervice, in which the cares of the man may be greatly lightened by the woman, nature doth not forbid the woman to exerciſe, who has been formed for his help; for ſuch duties are ſuited to the female ſex, and to ſuch the woman is compelled by Nature, who ſubjects her to the man with a ſubjection both domeſtic and ſocial. The parents of Sarah, the wife of Tobias the younger, duly conſidering theſe things, admoniſhed her to rule her houſehold, and govern her houſe. (Tobit, chap. x.) But from the diſcharge of higher and public offices, which are fit for men alone, as are the offices of Conſtable and

Marſhal of any kingdom, Nature hath excluded women; wherefore ſuch offices cannot deſcend to them, ſo long as everything that deſcends tends only to its natural place. And if ſuch offices be not allowed by nature to deſcend to women, how can the office of King, which is public, and the greateſt of all earthly offices, inaſmuch as it rules all men, and is ſubject to none,—how can it deſcend or be ſuited to the woman, whom nature hath ſubjected to the man? For nature makes a woman unwilling to repreſs with the ſword the audacity of men, or to adjudge criminals to death, according to their deſerts; and yet nothing is more incumbent on the regal office than theſe acts. Therefore, that the office of King is foreign to woman's adminiſtration, is in every way the deciſion of Nature's law; for it is not as my mother complains, that the law removes her alone from the paternal inheritance; for all her father's private poſſeſſions, ſuch as houſes, fields, and all kinds of land, which things woman's nature is capable of holding, ſhe poſſeſſes without the leaſt hindrance from me her ſon; nor is it the vaſtneſs of the domain, as ſhe conjectures, that in any way bars her from ſucceeding to her father's patrimony; but it is only the ſupreme royal dignity which ſhrinks from union with her, juſt as the above-named offices proper to men alſo refuſe to unite themſelves to her, although they be unadorned and lowly. At the commencement, however, of this examination, let certain ſalves, as it were, of reflection ſuffice; and if they cannot alleviate the ſwelling of maternal grief, we will then take care to remedy her complaint with more powerful unguents.

Chap. IV.

The Grandſon's reply to the ſecond allegation of the King's Daughter.

MOREOVER the Divine judgment, whereby, on the failure of male iſſue, the Lord hath declared that women ſhould ſucceed to their parents, will not influence thee, O Judge, for thou weigheſt the merits of that judgment in a juſt balance, and no truth of Holy Writ eſcapes thee. For it is not hid from thee how the Lord promiſed to Abraham, to Iſaac, to Jacob, and to their ſeed, the Land of Canaan as an hereditary poſſeſſion; nor how the five daughters of Zelophehad, who was deſcended from Manaſſeh, the ſon of Joſeph, Jacob's ſon, when he died in the wilderneſs without male heirs,—how they demanded of Moſes, that he would decree that part of the Promiſed Land which their father, had he lived for it, would have had, to themſelves to poſſeſs it in his right; and, when Moſes referred this caſe to God's deciſion, the Lord ſays—"The daughters of Zelophehad aſk a right thing; give them a poſſeſſion among their father's kindred, and let them ſucceed to him in inheritance; but to the children of Iſrael thou ſhalt ſpeak theſe things, when a man dies without a ſon the inheritance ſhall go to his daughter, &c." Are we not taught by theſe words that in the Land of Promiſe females did not inherit like males,

inaſmuch as the women did not at all ſhare with the males the inheritance of their parents? But, male iſſue failing, the Lord was willing that they ſhould enjoy the inheritance of their parents. And what has this to do with our caſe, who are diſputing about a kingdom? A kingdom is not, like a private patrimony, to be divided among males, and ſo not among females. It is only a political dominion that admits a plurality of rulers, but a royal dominion never. When this ſentence was given, the children of Iſrael had no king, nor had they one for three hundred and fifty-ſix years afterwards, according to the reckoning of St. Auguſtine in the 18th book of his De Civitate Dei, and Joſephus the Hiſtoriographer of the Antiquities makes the number of years much greater. Hence there was no queſtion concerning the ſucceſſion to a kingdom at the time when this Divine deciſion was given; ſo that there can be no reference to a kingdom in the reply to the queſtion which conferred ſuch a right of ſucceſſion, as it did, on women. Beſides, it was only to the children of Iſrael that the Lord publiſhed that law, ſaying, "Thou ſhalt ſay unto the children of Iſrael theſe things;" wherefore another nation is not bound by this deciſion. Hence there are many other nations which have not hitherto been ruled by this law. For in the Kingdom of France men and women indiſcriminately ſhare the paternal inheritance, and in the Kingdom of England neither do the males divide among themſelves the inheritance, nor do the women ſhare with the men, but the eldeſt ſon acquires the whole right of the parents. The ſame likewiſe is the caſe in many other provinces and kingdoms. Beſides, private patrimonies ought to be ſhared by women as by men, in order that they may have wherewithal to ſupport themſelves. But ſuch is not the caſe with public offices. For concerning a kingdom St. Thomas ſays, in his third book De Regimine Principum, that the kingdom is not made for the king, but the king for the kingdom. And it is hard to think that women can be of that ſort, ſince it becomes them better to be ruled than to rule. Nor is the government of a kingdom by women advantageous for them or for the kingdom. Wherefore, although the aforeſaid law lays it down in a general maxim that the inheritance of a man, who dies without a ſon, ſhall paſs to the daughter, we diſcern that this is to be underſtood only of private patrimonies, which the people and the vulgar poſſeſs, and not of public and royal dominions. For after the proclaiming of this law and before the creation of a king in Iſrael, and ever afterwards, all the private poſſeſſions of any deceaſed perſon were divided equally among all the ſons, and, failing them, among all the daughters, except that the firſt-born received a double ſhare of all the goods of the deceaſed. Nor had the father any power of changing that law from affection for a more dearly-loved daughter, as is clearly manifeſt from Deuteronomy, chap. xxi. But with reſpect to the right of reigning the laws of the Old Teſtament are very different. For the kingdoms of Iſrael and Judah were neither divided among the ſons of the kings, nor always deſcended to the firſt-born, certainly never to the daughters. The father alſo ſometimes made that ſon king whom he loved beſt, though he were not the firſt-born, as may be clearly learnt from the Book of Kings. A

difference of a like nature alſo between public perſons and private perſons was brought about by that law; for although it prohibited any of the children of Iſrael without diſtinction from marrying out of his own Tribe, yet it allowed the High Prieſts and Kings to take wives from any Tribe whatever. Theſe conſiderations make it evident that the aforeſaid law, which is ſet forth in the Book of Numbers, ought to be underſtood to ſpeak of private poſſeſſions, and in no wiſe extends itſelf to the ſucceſſion to kingdoms, and conſequently does not repeal nor can be an obſtacle to that right of ſucceſſion of which we have ſpoken, in the caſe of royal and public dominions.

CHAP. V.

Women never had the right of ſucceeding in the kingdoms of Iſrael and Judah.

MOREOVER, in the whole ſeries of the Old Teſtament there is not a trace of a woman reigning, by right of her parents, in Iſrael or Judah. Nay, that women ought not to ſucceed to thoſe kingdoms the ſacred utterances of that Teſtament abundantly inform us. In the firſt place, indeed, becauſe, before the children of Iſrael had any king, the Lord, by the mouth of Moſes (Deut. 17 chap.) commanded that people that they ſhould take unto themſelves no man as king except he whom the Lord himſelf ſhould direct. In like manner, Moſes, in the ſame place, explained alſo how the king ſo choſen ſhould behave, warning him to act according to that which he taught in that place, in order that he and his ſons might reign long over Iſrael. Lo! how Moſes ſays that the king's ſons could ſucceed the king; but that the Lord granted right of ſucceſſion to the daughters is not read either in this place or elſewhere in any page of Holy Writ. And, beſides, Ahaziah, king of Iſrael, died without a ſon, and was ſucceeded in the kingdom by his brother Joram, as is written in the Second Book of Kings, chap. i., where it is expreſsly written, that he had not a ſon. But it is not written that he had not a daughter, though it would have been neceſſary ſo to write, if by his death he had, as that Scripture tells us, transferred the kingdom to his brother, while it was lawful for a daughter to have ſucceeded him; and ſo, alſo, we are hereby taught by implication, that a daughter could not have ſucceeded him in the kingdom. In like manner, as often as the Lord threatened the kings of Iſrael, as Jeroboam, Baaſa, Ahab, and other idolaters, that on account of their wickedneſs He would put an end to their kingdoms, He almoſt as often, among the weighty words of his threatening, ſays that He would not leave of them *mingentem ad parietem*. Now this action is the action of a man, and not of a woman, the Lord thus diſtinguiſhing the ſons of thoſe wicked men from their daughters, as the male dog is diſtinguiſhed from the female, a diſtinction which He would certainly not have made if the female, like the male, could have ſucceeded to thoſe kings ordained to deſtruction. In like manner, alſo, the exterminators of

thoſe kings are ſaid to have ſlain their ſons and not their daughters, although Ahab, whoſe ſeventy ſons Jehu had ſlain, and other kings, whoſe numerous ſons were put to death, had, without doubt, ſome daughters among ſo many ſons; and Athalia, daughter of that moſt wicked woman Jezebel, who believed that ſhe had ſlain all the offspring of the kings of Judah, even ſlew the ſons of her own ſon, in order that ſhe might herſelf poſſeſs that kingdom in greater ſecurity; and yet ſhe was not at all anxious to kill Jehoſheba, the king's daughter, and wife of the High Prieſt. From theſe and many other evidences, in which the Books of Kings abound, we are taught, that, although in the caſe of private patrimonies the laws of the Old Teſtament have allowed women to ſucceed to their parents, they have by no means promiſed them the ſucceſſion in the caſe of kingdoms.

CHAP. VI.

The Grandſon's Title to his Grandfather's Kingdom.

MOREOVER, as the huſbandman makes not haſte to ſow the earth, until he hath firſt rooted up the briars, in the ſame way it was not until I had firſt cleared the ground of the arguments put forward by the noble lady, my mother, that the time came for me to diſcloſe the title by which I claim the kingdom. It is now, therefore, the fitting moment for me to unfold the right by which the kingdom of my grandfather belongs to me, even in the lifetime of my mother. She has herſelf, however, in no obſcure or humble manner made evident that right, in that ſhe aſſerted that that moſt Serene Prince, my lord and grandfather, formerly king of the Aſſyrians, died poſſeſſed of that kingdom without leaving male iſſue; wherefore, ſince, owing to the cauſes before ſet forth, that kingdom could not fall to her, it is to me, that king's grandſon, whom no right debars from the poſſeſſion of a kingdom, that it ought, in like manner, to deſcend, and by all right does deſcend. Thus our Lord Jeſus Chriſt, in the lifetime of his mother, was, by hereditary right, King of the Jews; wherefore, while he was yet crying in the cradle, the Magians ſaid, "Where is he who was born King of the Jews?" Did not He who was born King of the Jews poſſeſs that kingdom at the very time of His birth? Wherefore, ſince Chriſt had no human father, we muſt of neceſſity acknowledge that, as He reigned, He reigned by right of His mother's parents. Behold, how we are told in one and the ſame ſentence of Holy Writ, not only that the ſon is permitted to reign in right of his mother, but alſo that the mother herſelf is not allowed to reign. The Son is called King of the Jews, but the Mother, who is Queen of Heaven, is never called Queen of the Jews, nor could He Himſelf, at the ſame time have been king, and his mother queen of one nation by hereditary right. Thus, alſo, all the doubts and difficulties, if any there were, of our caſe are made clear by the holy ſentence; and the ſame judgment which we beg thee, O moſt excellent Judge, to form was

in old times uttered by the Three Kings, under the inſpiration of the Holy Spirit, and miraculouſly guided thereto; wherefore, there ſcarce remains any difficulty for thee in pronouncing judgment in this diſpute. Pronounce, therefore, that which is pointed out by the dictation of the Holy Spirit. When the King's Brother had heard theſe words, he was ſtirred up, and ſpoke as follows to the Judge.

Chap. VII.

The Propoſition of the King's Brother.

MOST learned of Judges, who, like a man, exploreſt the hidden things of the Divine counſels, whence it belongs to thy virtue to unfold Divine as well as human reaſon in this diſpute, clear up by the rays of thy wiſdom the truth, which the dark diſputation of Mother and Son hath concealed. For although the mother hath of her own accord related the truth as to the matter of fact about which we are contending, the truth touching the right which we are in ſearch of ſhe has hidden under thick clouds of error. But although the ſon, impatient of his mother's miſtake, from which he fears injury to himſelf, has by an impregnable argument proved that the ſentence in the Book of Numbers, brought forward in behalf of women's rights of ſucceſſion, cannot give ſupport to his mother, and has moſt truly aſſerted that in the caſe of a kingdom a woman is not able to ſucceed as in the caſe of any other patrimony, yet the legal cauſe which thus excludes her from the crown he has, out of I know not what partiality, very faintly demonſtrated, and has very cunningly ſupported his title to ſucceed to the kingdom now in queſtion beneath the ſhadow of certain fictions. But, inaſmuch as nothing is rightly known which is not known by its cauſe—in the words of the Philoſopher, in the ſecond book of his Metaphyſics: "We know not what is true, apart from its cauſe, and we think we know a thing when we know the cauſes themſelves;"—leſt the ſon, tempted by partiality for his mother, or by the hope of ſucceeding through her to the ſaid kingdom, ſhould deſire this diſpute to be paſſed over without laying bare the cauſe aforeſaid, to the injury of my right and title, I will explain, as beſt I may, that cauſe; and after that I will ſtrive to recite the title which he has fabricated for the kingdom. If, after having gone through theſe matters, I ſhall have duly demonſtrated that neither mother nor ſon have any right to the ſaid kingdom, I beſeech you to declare by a final ſentence that the kingdom of the departed king belongs by hereditary right to me his Brother.

CHAP. VIII.

He ſhows, in the firſt place, the reaſon why a Woman ſucceeds not to a Kingdom, as to any other property.

THE Philoſopher, in his treatiſe on Animals, ſays that the members of women, which are ordained for the generation, geſtation, and nutrition of offspring, ſuch as the belly, the poſteriors, and the breaſts, are larger than thoſe of men, but that their other members, ſuch as hands, feet, arms, and legs, are ſmaller than thoſe of men; that is to ſay, the bones and ſinews in which ſtrength reſides are ſmaller, weaker, and of leſs virtue in women than in men. He alſo ſays that the woman is a mulcted male (*mas occaſionatus*), that hence, as ſhe is deficient in her phyſical framework, ſo ſhe is in her reaſon; and that on account of their lack of heat and deficiencies in conſtruction, women are timid, and filled with too great a fear of death. Is it not then the caſe that, as from theſe facts we can perceive that the ſhape and ſize of the belly, loins, and breaſts of a woman, ſhow her duties to be in certain reſpects naturally different from thoſe of man, in like manner both the ſize and ſtrength of other members in men have declared their offices to be in certain reſpects naturally diſtinguiſhed from thoſe of women? For in this way the claws, teeth, and jaws of lions, which are ſtronger and larger than thoſe of other wild beaſts of prey, ſhow that their prey is larger and more powerful than that which other wild beaſts devour. In the ſame way the eagle is armed with ſtronger beak and talons than the kite. Thus, alſo, the monſter of the deep ſurpaſſes in ſize and ſtrength the fiſhes that it devours. So that there is no living animal, bird, or fiſh which doth not by its organs, form, or powers ſignify the office for which nature created it: who, as the ſame Philoſopher in the ſame work ſays, in the 8th book, gives to every animal members adapted to the work for which ſhe deſigned it. What workman ever framed an implement which was not adapted to the work he intended to do? Thus the axe is fitted for hewing, and the blunt mattock is adapted for digging. Wherefore, ſeeing that thoſe other members in women are ſmaller and leſs efficient than thoſe of men, the bodily organs and powers of women manifeſtly prove them to be formed for leſſer and inferior duties than men. Wherefore St. Thomas ſays, in the 4th book of his De Regimine Principum, that, as in a polity the various offices are diſtinct, ſo alſo in economy they are divided. For the man devotes his attention to affairs outſide, the woman hers to the internal buſineſs of the family. Whence it is the duty of a woman, as he himſelf ſays in the ſame place, to keep quiet at home, and to look after the concerns of the houſehold. Wherefore Solomon, at the end of Proverbs, attributing the fortitude of a woman to this alone, has commended her exceedingly for her care of her houſehold, as the whole ſum of her duty, compoſing, as he ſays himſelf, a treatiſe thereupon and a Canticle, (the firſt letter of each verſe following the order of the Hebrew alphabet,) which begins in this way, "Who ſhall

find a brave woman?" in which he refers the whole regimen of women to domeſtic action, as will be clear to any one who conſiders the text with care. Wherefore the Saint, while he declares the woman to be by nature ſubject to the man, ſays that ſhe is put under him in the way of houſehold (*yconomica*) ſubjection; and thus her whole duty is conſidered to be of a houſehold and domeſtic nature only, eſpecially as nature has not provided her with appliances ſuited to other purpoſes. Wherefore it now becomes proper to explain what the duty of a king is, in order that we may thus be taught whether a woman is competent to perform it. Now the Apoſtle, in the 13th chapter of the Romans, ſpeaking of the duty of a king, among the reſt, ſays this, "For he beareth not the ſword without cauſe, for he is the miniſter of God, a revenger to execute wrath upon him that doeth evil." In like manner alſo St. Peter, in his firſt Canonical Epiſtle, chap. ii. ſays, "Submit yourſelves to every human creature for God's ſake; whether it be to the king as ſupreme, or unto governors, as unto them that are ſent by him for the puniſhment of evil deeds, and for the praiſe of the good;" by which words we are taught that it is the king's office to repreſs the bad with the ſword, and to defend and cheriſh the good; ſo that he hath the duty not only of fighting, but alſo of judging. Hence the children of Iſrael, when aſking for a king, ſaid to Samuel, "Our king ſhall judge us, and go out before us, and fight our battles for us." (1 Sam. chap. viii.) Behold, therefore, to fight and to judge are the duties of a king! Is then a woman able to exerciſe that office, or is the female ſex equal to ſuch duties? For fighting is the greateſt of all the actions of man's body, and judging is the loftieſt operation of his ſpirit. For the performance of the greateſt actions of the body nature has adapted the limbs of men, which ſhe has made of larger ſize and greater ſtrength than the correſponding limbs of women; and for the greateſt achievements of the ſpirit nature has given to man a perfect reaſon, in reſpect of which ſhe has made the woman the weaker veſſel. Were not, then, theſe greateſt actions of the body and ſpirit aſſigned to man and not to woman by nature, when ſhe gave to man alone the perfect power of performing them? Who will ever do that which he is incapable of doing? For the performance of theſe actions nature hath given to women neither the organs nor the ſtrength of mind. Thus, therefore, the office of king, which alone hath its exerciſe in theſe higheſt acts of men, nature hath granted to the man alone, and the female ſex ſhe hath made alien therefrom. Have we not now, then, rightly ſhown the cauſe why women cannot ſucceed their fathers in the royal office, nor even in thoſe offices of a like nature above ſet forth, ſo long as the Law of Nature cannot join together that which Nature herſelf doth ſeparate?

Fighting and judging are the loftieſt of all human actions, and require the higheſt degree of courage and virtue.

CHAP. IX.

Here he makes a fuller diſcloſure of the ſaid cauſe, and proves that the King's Daughter has no ground of complaint.

SOCRATES and Plato have adjudged it to be matter of public policy that women ſhould go to war. But Ariſtotle, in the ſecond book of his Politics, has condemned their opinions by the ſoundeſt arguments. So alſo has St. Thomas done in his fourth book afore-mentioned. For women have not ſtrength ſufficient to meet men in conflict, ſeeing that nature has made men ſtronger than them; nor are they bold enough to encounter the terrible array of the camp, ſeeing that nature has made them timorous; nor are they able to eſcape from the perils of war, ſince nature has not made them ſagacious like men. And for this reaſon they cannot act as judges, ſince of all things human the judicial function requires the moſt diſcernment. From a conſideration of theſe things lawgivers have not ſuffered women to be judges, nor to hold a public magiſterial office, and conſequently, it would ſeem, there remains for them no concern with the office of king. (ff. De Regulis Juris, Lege *Feminæ*.) In like manner the ſacred Canons alſo have denied to women the ſaid offices. (xxxiij^a. q. v. Ca^n. *Mulierem*.) Moreover, ſince nature, as the Philoſopher ſays, works in the beſt way in all things, becauſe ſhe is herſelf guided by an Infallible Agent, and likewiſe is never wanting in neceſſary inſtruments, as St. Thomas very often relates in the ſaid book—if nature had ordained woman, who is weak, timid, and of a leſs perfect reaſon, for duties that require the greateſt courage, boldneſs, and authority, ſhe would not have worked all things in the beſt way; nay, ſhe would have even been wanting in things neceſſary, in aſſigning an unſuitable, inconvenient, and inefficient inſtrument for ſo great an office. The Philoſopher, alſo, in the ſecond book of the Politics, ſays that a city is badly governed by women. Is it poſſible to doubt that a kingdom would be ſtill worſe governed by them? And whereas in the firſt book of the Politics he ſays that the counſel of women is feeble, we cannot doubt that their rule, eſpecially over kingdoms, would be much more feeble. Wherefore, whenever a woman hath made her way into ſuch an office, it is not the force and excellence of nature that hath done it, but the iniquity of a mind filled with an evil ambition. And beſides all this, art, as the Philoſopher and alſo St. Thomas ſay, imitates nature to the beſt of her power; but nature works nothing except with ſuitable and the fitteſt inſtruments; art, therefore, which imitates nature, works not otherwiſe. Who ever hunts hares with cats? Nature diſpoſes greyhounds for the fields and the purſuit of hares, but cats for ſtaying at home to catch mice. It is a ſhame, as though a man ſhould hunt game with cats, to draw away from home, for the purpoſe of governing nations, the woman whom nature has fitted for domeſtic duties. Nature did not make woman a fit inſtrument for that purpoſe. An artificer is not ſo inconſiderate as to cleave wood with a mattock, nor a ſailor

ſo careleſs as to entruſt the oar to the hands of one with the palſy. A carpenter may faſten planks to planks with glue, juſt as a maſon may unite ſtones to ſtones with mortar, but neither carpenter nor maſon will find it poſſible to faſten planks to ſtones, either with mortar or glue; for no art can unite thoſe things which nature utterly disjoins. Behold, then, a ſufficient cauſe clearly ſet forth why a woman cannot ſucceed in a kingdom, eſpecially in one where the king acknowledges no ſuperior. To the Mother, therefore, there is left no matter for complaint. Wherefore it now only remains for us to make an end of the Son's arguments, of which there are two, namely, that a grandſon born of a daughter ought to ſucceed to his grandfather in the lifetime of his mother; and that Chriſt, while his mother was ſtill ſurviving, in like manner ſucceeded to the kingdom of Judah; with the firſt of which I proceed to deal as follows.

CHAP. X.

He now proves that the Son cannot ſucceed to the Kingdom in right of his Mother.

IF any one ſhall have granted lands to a man and the iſſue male of his body, and that man has a daughter, but dies without leaving a ſon, no one doubts that the lands revert to the donor; becauſe to that gift there is annexed a condition, implied though not expreſſed, viz. that if the donee ſhall have no male offspring, the lands ſhall revert to the donor by his original right; and ſuch a gift tacitly impoſes on the lands this condition, that only the male offspring of the donee ſhall poſſeſs them. And if the ſaid daughter, after her father's deceaſe, marry a huſband, by whom ſhe bears a ſon, we cannot doubt that this ſon has no power to recover the ſaid lands from the donor, who then has lawful poſſeſſion of them. How then can there be any derogation from the donor's right, if the daughter in her father's lifetime have borne this ſon in lawful wedlock? Can the haſte of his birth prejudice the right of the other, who contributed nothing to his begetting? How ſilly it would be to imagine ſuch a thing! And in theſe matters the certainty of the law cannot eſcape our notice, ſince caſes of the kind are of very frequent occurrence in almoſt all the kingdoms of the world; ſo that in the ſentences of judges that certainty is very conſtantly made known. For in the Kingdom of France, when kings have aſſigned their dominions in the form above ſignified, and the grantees have left behind them daughters, and have died without male progeny, the kings of that realm immediately reſume thoſe dominions, and from that time retain them by ancient right of their crown, none ever reſiſting that right. And although, owing to an unuſual cuſtom that prevails there, poſſeſſions of all kinds are ſhared alike between the ſons and the daughters of the deceaſed, yet the daughters have no ſhare with the males in the caſe of patrimonies given under the above condition, nor have the ſons of daughters any part thereof with their uncles. The caſe is the ſame in the Kingdom of

England alſo, where a gift of this kind is called a gift of entail. And where the eldeſt ſon alone ſucceeds to his father's inheritance, if ſuch a donee has two ſons, the elder of whom begets a daughter who gives birth to a ſon; if that elder ſon dies without leaving ſons of his own, the inheritance thus entailed, after the death of the grantee, ſhall deſcend to his younger ſon, and no ſhare of it whatever ſhall fall to the daughter of his elder brother, or to her ſon. Theſe facts are ſufficiently well known to the preſent Writer, who for more than forty years ſtudied and practiſed himſelf in the laws of that realm, and at length diſcharged for a long time the higheſt judicial functions of that land. In what reſpect, then, doth the caſe about which we are diſputing differ from the caſes juſt quoted? Hath it not been ſhown that, as a kingdom owning no ſuperior is proved to deſcend to males alone, ſo lands alſo which have been conferred upon a man in the form now ſpecified, are inheritable by the male ſex only? Wherefore, by analogy, as theſe lands cannot deſcend to a grandſon born of a daughter, ſo neither can this kingdom, which is held by a like right, deſcend to the Grandſon, who is now contending for it. And how can the mother tranſmit to her ſon a right which ſhe herſelf is incapable of poſſeſſing? The Rule of Law is, that no man can transfer to another a greater right than is adjudged to belong to himſelf. Surely it would be a thing more marvellous than any prodigy, if a woman, never pregnant, ſhould give birth to a child, and become a mother before ſhe had conceived; nor would it be leſs monſtrous if the ſon ſhould ſuck, I will not ſay barren breaſts, but honey from the rock. Since theſe things are altogether repugnant to nature, the law of nature decides that they cannot be done; ſo alſo a woman, whom nature ſuffers not to reign, cannot tranſmit to her ſon the right of reigning. But further diſcuſſion on theſe points hath neither profit nor pleaſure, leſt the hearers ſay, Why doth this man buſy himſelf to adorn the manifeſt truth? Will he make the ſun's rays clearer by his arguments? I therefore ceaſe, and haſten to refute the ſecond argument put forward by the Grandſon; ſince it requires a much more lengthy method of reaſoning than theſe naked truths, nor can it be explained without the guidance of Holy Writ.

CHAP. XI.

He here ſhows that Chriſt was not King of the Jews in right of His Mother.

IF our Lord Jeſus Chriſt had, by right of his parents, been King of the Jews, as the King's Grandſon aſſerts, it were impoſſible to give a rational explanation why, in like manner, the grandſon himſelf ſhould not, by right of his parents on the mother's ſide, be king of the Aſſyrians. But if by other right than that of ſucceſſion Chriſt was King of the Jews, His Kingdom gives no ſupport whatever to the ſaid grandſon in this ſuit. Now it is certain, and we firmly believe that Chriſt was King of the Jews; for that He ſhould be ſo the angel promiſed before He was conceived, in theſe words, "The Lord God

ſhall give unto Him the ſeat of David His father, and He ſhall reign in the Houſe of Jacob for ever, and of His Kingdom there ſhall be no end." And after He was born, the Magi affirmed that He was King of the Jews, not only by right but in very fact, ſaying, as is quoted above, "Where is He who is born King of the Jews?" Holy Scripture abounds alſo in many other ſacred utterances, by which we are clearly taught that Chriſt was without doubt King of the Jews. But, nevertheleſs, the ſacred hiſtory does not ſet forth that he was King of the Jews by hereditary and temporal right of ſucceſſion; nor are we ſo taught by the opinions of Catholic doctors. Nay, St. Matthew, the Evangeliſt, in the beginning of his Goſpel, ſhows that Joſeph, Mary's huſband, was at the time of the birth of Chriſt, the true heir to the kingdom of the Jews, and the true heir of every one of the kings who reigned there from the times of David and Solomon—to whom that kingdom was granted and confirmed by the Lord,—until the carrying away into Babylon, and that the ſame Joſeph is the lineal deſcendant of all thoſe kings. And although, after the time of that carrying away until the advent of Chriſt, no man of the lineage of thoſe kings had been named king of Iſrael or Judah, or diſtinguiſhed with the royal diadem, yet the ſaid Evangeliſt ſhows that the right of reigning had come down to Joſeph by direct line from the laſt of the kings who reigned in that country before the carrying away; and that Joſeph, alſo, was himſelf in like manner deſcended from all thoſe who, during that interval of time, had the right to the kingdom of the Jews. In like manner, alſo, was he deſcended from Judah, ſon of Jacob, of whom his father propheſied, ſaying, "The ſceptre ſhall not be taken from Judah, nor a leader from his thigh, until He who muſt be ſent (Shiloh) come, and He ſhall be the expectation of the Gentiles." And that Joſeph was himſelf living at the time of the Lord's birth, and long afterwards, the ſame Matthew clearly reveals (Matt. chap. ii.). Wherefore, ſince two perſons could not have been kings of the Jews by hereditary ſucceſſion at the ſame time and jointly, and ſince it has been proved from the Goſpel that the right of reigning over them had deſcended to Joſeph, while the Magi affirmed, in the lifetime of Joſeph, that Chriſt was king of the Jews; we are therefore compelled to acknowledge that He reigned over them by ſome other title than an hereditary title of deſcent. And what his title was we have already acknowledged, when we ſaid that, before He was conceived, the Lord promiſed that He would give Him the ſeat of David His father, who was king of Iſrael, and therefore of the Jews alſo, and that He ſhould reign in the houſe of Jacob, who was alſo called Iſrael, for ever, and that of His kingdom there ſhould be no end. But ſince His kingdom was eternal and without end, of ſuch a kind as no human kingdom could be, we can underſtand without difficulty that Chriſt was King of the Jews in a ſpiritual manner; king of that kingdom whereof we daily ſay to God, "Thy kingdom come;" which kingdom comes and goes here *in viâ*. And Chriſt Himſelf, when aſked by Pilate if He were King of the Jews, without denying it, ſays, "My kingdom is not of this world." For He does not ſay, My kingdom is not *in* this world; but He ſaid, "My kingdom is not *of* this world." But His kingdom

would have been both of this world and in this world, if the kingdom of the Jews had deſcended to Him from man by right of his mother, or by any other temporal right. Yet, in truth, not only in a ſpiritual, but alſo in a temporal ſenſe, in fact and of right, was He King of the Jews. Thus when queſtioned by Pilate concerning the nature of His kingdom, He would not diſavow his right, but ſaid, "Thou ſayeſt that I am a king; unto this was I born, and for this cauſe came I into the world, that I might bear witneſs to the Truth." Again, when He ſat upon the aſs, He would have Himſelf called King; and the people cried, "Bleſſed is the King of Iſrael, who cometh in the name of the Lord;" even as the Prophet ſpake concerning Him, "Fear not, daughter of Zion, behold thy King cometh unto thee, ſitting upon an aſs's colt." For, before a king had been granted to the people of Iſrael, the Lord, by the mouth of Moſes, ſtraitly commanded that no one ſhould be appointed king, except him whom the Lord ſhould direct. (Deut. chap. xvii.) Wherefore the Lord Himſelf choſe Saul their firſt king, and cauſed him to be anointed, and appointed him king. So, likewiſe, David and Solomon, Jeroboam alſo, and Jehu, and ſome others the Lord himſelf made kings of Iſrael and Judah; and they were made kings not by title of ſucceſſion, but by right of Divine appointment. Wherefore, though not by temporal right of ſucceſſion, yet in a temporal, as well as in a ſpiritual ſenſe, Chriſt had been appointed by the Lord King of the Jews and of the whole world; of whoſe reign there ſhall be no end, and whoſe Vicar on earth is the Supreme Pontiff, poſſeſſed of the higheſt power, to whom all earthly power is made ſubject, even to the kiſſing of his feet. Far be it then from us to think that a power ſo exalted as this had deſcended from man by temporal ſucceſſion. Nor can theſe concluſions be refuted by the fact that Matthew, at the opening of his Goſpel, promiſed to conſtruct the generation of Chriſt; which promiſe he certainly was not going to perform, if he made known the genealogy of Joſeph and not of Chriſt, a thought which all would feel to be a ſin. For that all whom he calls anceſtors from Abraham to David inclusive, of which David Chriſt is very often called the ſon, were anceſtors of Chriſt, is admitted by all; but of the reſt, as of Solomon, and of all their deſcendants down to Joſeph, whether any one of theſe was or was not an anceſtor of Chriſt, the Evangeliſt does not explicitly reveal; yet he ſhows by implication that Chriſt was born of the ſame ſtock as Joſeph, in that he calls Joſeph Mary's huſband; for if ſhe had not been one of his Tribe it would not have been lawful for him to have married her; ſince in the laſt chapter of Numbers the Lord ſays by Moſes, "Let all the men take wives from their own Tribe and kindred, and all the women receive their huſbands from the ſame Tribe." Wherefore that Mary, our Lord's mother, belonged to the ſame Tribe as Joſeph, namely, the Tribe of Judah, is made ſufficiently clear in that Goſpel. In like manner we believe that ſhe was deſcended from David alſo, ſince Chriſt is ſo often called the Son of David; yet we are not told in that Goſpel that ſhe was deſcended from Solomon, or from any iſſue of his. Wherefore, ſince Luke has written that Chriſt was deſcended from Nathan, who was the ſixth of David's ſons, as is clear from Luke, chap. iii.,

it is believed that he has hereby revealed to us that St. Mary was deſcended from the ſame ſon; wherefore it can be conceived that Joſeph and Mary were deſcended from two brothers, ſons of David. But becauſe Matthew ſhows that Joſeph was deſcended from Judah, Jacob's ſon, by the male line, the ſame Matthew evidently excludes Mary and her ſon from the hereditary ſucceſſion of the kingdom of Iſrael and Judah during Joſeph's life, ſince ſo long as males were living women could not ſucceed to the inheritances of the children of Iſrael, as is moſt clearly declared in the ſaid thirty-ſecond chapter of Numbers. Wherefore, ſince Chriſt was King of the Jews not by a temporal title of ſucceſſion, but only by right of Divine appointment, His kingdom can afford no ſupport to the Grandſon aforeſaid in this ſuit.

Chap. XII.

The title of the King's Brother to the Kingdom in diſpute.

IT having been now moſt clearly ſhewn and proved that my niece, the King's Daughter, cannot ſucceed her father in the kingdom, and ſo cannot tranſmit the right of ſucceſſion to her ſon, his kingdom will by every right belong to me, the King's Brother, juſt as we ſhewed that an eſtate entailed in the above-deſcribed form on he rs male devolves in a ſimilar manner. And although the coſts and damages, which I have ſuſtained by means of the wrong inflicted in this ſuit, would by force of law be granted me together with the kingdom, yet, in conſideration of the nearneſs of blood whereby we, the parties to this diſpute, are mutually allied, it is the kingdom alone, O moſt upright of Judges, that I entreat may be adjudged to me by your ſentence, in order that by your decree the truth of Juſtice may henceforth in like caſes become known to the world at large.

HERE FOLLOW THE REPLICATIONS OF THE COMPLAINANTS, VIZ. OF EACH OF THEM AGAINST THE ALLEGATIONS OF THE OTHERS.

Chap. XIII.

Replication of the King's Daughter.

BUT the King's Daughter, breaking out of ſobs into a voice mingled with ſighs, thus began with all that during a long ſilence ſhe had ſtored up, ſaying: Have compaſſion, have compaſſion, O moſt pious of Judges, upon this unhappy woman, haraſſed by calamities ſo great. Two are fighting againſt one woman, two men inſult one

who is only a woman, a ſon is wronging his mother, and the uncle is burning to diſinherit his niece. But there is one thing which heaps up the load of my grief; my ſon who ſhould be the ſtaff of my old age, has become unto me a hammer grinding and cruſhing all the conſolations of my life. Tell me, I pray, who ever heard of ſuch deeds. Behold in the lifetime of his parent the ſon ſtrives to get poſſeſſion of her domain by hereditary right. But it is by death that every inheritance deſcends, and never by life. Like the phœnix, a bird of which there exiſts but one, would be the right of my ſon, if he ſhall be able to obtain that which he aims at; for the world hath not known a right like this. What law could have created ſuch a right? Certainly not the Law of Nature; and yet to it alone is it left to deal with our caſe. For that law, although it once made all things common, yet, after the fall of man, appropriated to thoſe who toiled all the things which they by rightful labour acquired. Wherefore an eſtate acquired by the father's induſtry, on his death, that law, by title of ſucceſſion, aſſigns to the ſon, juſt as if he had ſhared his father's toil. Thus Iſaac and Jacob and his ſons had poſſeſſion of the land which Abraham bought for a burial ground. So alſo Cain's ſons, although accurſed, rightly occupied the city which he built; nor in the lifetime of Abraham or of wicked Cain was it allowed their ſons to take away anything which they, i. e. Abraham and Cain, had acquired by their juſt toil; nor indeed by any other title than by gift of the rightful owner could a poſſeſſion of this kind be transferred to another man according to the law of nature. By what right then my father's kingdom, which is mine by hereditary title, can be transferred to my ſon during my lifetime, when I have not given it to him, and the law does not allow ſucceſſion during the parent's life—to give a rational explanation of this ſurpaſſes ſurely the wit of man. Nor can my ſon in this diſpute derive any help from that fact upon which he reſted ſo anxiouſly, as the beſt prop of his title, namely, that Chriſt, as he would have it, in the lifetime of his mother was King of the Jews by hereditary right; for his great-uncle has with irrefutable arguments condemned this concluſion as an impious error. Wherefore there is now left him no ſupport on which in defence of his error he can lean. Impoſe therefore ſilence upon him, O moſt ſkilful Judge, in this lawſuit, ſince only after my death can the right to the kingdom accrue to him. And thus when he is ſilent, thou wilt be able in more quietneſs to put an end to this diſpute, and I ſhall be able to reply in greater peace to the objections of my uncle.

In the firſt place ſhe proves that her ſon cannot ſucceed during her lifetime

CHAP. XIV.

The King's Daughter here ſets in order the proceſs by which ſhe intends to advance.

NEVERTHELESS, O Judge, leſt thou ſhouldeſt be moved by the arguments which my ſon has propounded, I will endeavour to deprive of their ſtrength, under one and the ſame form of reply, not only his arguments, but alſo all thoſe which my uncle urged. Although ſet forth with many diſſertations, ſtill two reaſons only are laid

before you, why women ſhould not ſucceed their parents in the caſe of kingdoms as in the caſe of other inheritances; namely, becauſe nature has made them inferior to men both in courage and in reaſoning powers, and ſo ſuffers them not to conquer men in battle, nor to give judgment in courts of law; and yet theſe two things alone conſtitute the office of king; wherefore, it is ſaid, to be without the power of performing theſe things is to be without the power of diſcharging the office of king. When therefore theſe grounds are overthrown by correct reaſoning, the arguments of both the diſputants which depend thereupon are alſo refuted. Wherefore I will firſt endeavour to diſprove theſe reaſons, and then I will demonſtrate, as I ſhall be able, that the female ſex, like the male, is capable of the regal office.

CHAP. XV.

She now refutes the reaſons which would prevent a Female Reign.

IF from theſe two reaſons it followed that women ſhould not reign with ſupreme authority in a ſtate, it would from the ſame reaſons alſo follow that infants, decrepit old men, and men waſting under ſevere diſeaſe ſhould be rejected from the ſummit of dominion, ſince they too have not the power of waging war and giving judicial deciſions, like men of unbroken health and in the prime of life; and hence it would follow that, ſince kings do not always leave behind them wiſe and ſtrong heirs, kingdoms would not be held by title of ſucceſſion. Wherefore, ſince that reſult would be unjuſt, neither can it be concluded from the reaſons aforeſaid that women ought to be rejected from the regal dignity, ſince this and the former concluſions fall under the ſame principle of equity. The natural dominion which exiſted in the time of man's innocence and which, as St. Thomas ſays, conſiſted in the office of adviſing and directing, would always have been exerciſed by wiſe men; (this is the dominion of which the Philoſopher ſpeaks in the Politics, when he ſays that the man who is vigorous in underſtanding and activity is by nature lord); but the poſitive and particular dominion, which, after ſin entered into the world, was laid by man upon his fellows, is wielded ſometimes by wiſe men, ſometimes by brave men, at other times by men who are neither one nor the other, nay, often by dull and ſpiritleſs men; for it is poſſeſſed ſometimes by title of ſucceſſion, ſometimes by that of election, and not always by deſert of virtue. Wherefore, although in any office it is good to act ſupremely well, yet always ſo to act is neither allowed by human infirmity, nor required for the due diſcharge of the office. For in every ſervice it ſuffices for him who ſerves to act well, and a woman is capable of ſo acting even in the regal ſtate and dignity. For the duty of royalty does not require the king to fight battles, or give judicial ſentences, in perſon; it is enough for him to perform ſuch acts by ſufficient deputies. Thus David waged many of his wars by means

of Joab. Thus the Emperor Juſtinian, intent upon framing his laws, ſubdued many kingdoms by means of Beliſarius. Kings likewiſe frequently decide the cauſes of their ſubjects better by means of judges ſkilled in their laws than by themſelves in perſon. Which of the Judges ever judged the people of Iſrael better than the wiſe woman Deborah? Who ever waged the wars of her people more bravely than Tomyris Queen of the Maſſagetæ, who ſlew Cyrus King of the Perſians and Monarch of all Aſia? Who hath ever ſubjugated nations with the ſword more ſtrenuouſly than Semiramis did long ago, the conſort of Ninus Prince of the whole Eaſt, who with brandiſhed blade made not Aſia only, but Ethiopia and a great part of India tremble? Doth not the kingdom of the Amazons alſo, which is always ruled by women, defend itſelf ſtoutly againſt all the lords of the world? Aſſuredly this parchment would not ſuffice to contain the names, were they recorded, of the noble women who have ruled nations with vigour and great juſtice. Why then do my ſon and uncle try to caſt me off from an office in which ſo many women have ſo eminently diſtinguiſhed themſelves? As I have ſaid, did the law which permitted ſo many women to reign ever exclude me therefrom? Judge, therefore, and decide my caſe, O moſt righteous of Judges, and conſider how many Dukes, how many Marquiſes, and how many Earls, who like Kings have ſupreme power over their people and judge them and fight their battles, are all the world over ſucceeded by daughters who inherit the dignities and dominions of their parents! And yet between the titles of theſe women and mine no difference is to be found. And what if, as my ſon ſays, we do not read that the kingdom of Iſrael or Judah deſcended to women? Neither truly do we read that any of the kings reigning there died without male heirs, leaving only daughters. The judgment, therefore, which thou, O moſt learned of Judges, wilt pronounce in this diſpute is clear. Pronounce it therefore without delay, not baffled by any ſuch crafty perſuaſions as theirs.

REPLICATION OF THE KING'S GRANDSON TO THE ALLEGATIONS OF HIS MOTHER.

CHAP. XVI.

He firſt ſhows how he lays claim to his Grandfather's kingdom as the heir of his Grandfather, and not as the heir of his Mother.

THE Son, weighing theſe things in the depths of his mind, thus, with modeſt air, addreſſes the Judge: "Did I not, O Juſtice, obſerve th firmneſs of thy conſtancy, my mother's arguments might, perhaps, alarm me. But in this is my ſpirit ſtrengthened, that it is not the jingling ſound of words, but the weightineſs of opinions that is pleaſing to thy mind. For I do not, as my mother imagines, and likewiſe her uncle, demand my grandfather's kingdom in right of my mother. What ſane man would claim a right through a perſon whom he himſelf judges to be void of all right? For that famous Rule of Law is not unknown to me which proclaims that no man can tranſfer to another a greater right than is adjudged to belong to himſelf. Therefore, not in right of my mother, which is naught, do I demand my grandfather's kingdom, but by title of ſucceſſion, which has through her lapſed to me from my grandfather, do I, as his heir claim the kingdom whereof he died inveſted, and which ought thus to have deſcended to me through her, even though ſhe herſelf had departed this life in the lifetime of my grandfather. For if I had been his grandſon, not by a daughter, but by a ſon who had died in my grandfather's lifetime, I ſhould certainly have ſucceeded him in the kingdom by hereditary right through my father, who (according to the ſuppoſition) had no right whatever in the kingdom, nor ever had the power of giving it away, or transferring it to another. Why, then, can I not in like manner ſucceed the ſame grandfather through my mother, although ſhe herſelf poſſeſs no right in his kingdom, nor ever had the power of giving it away or granting it? For ſhe is only the medium and vehicle whereby my grandfather's kingdom is transferred to me by the law of nature, juſt as a rope or cord may be the vehicle and medium whereby a beam guided from above can be put in its place in a building beneath, though the rope or cord be no part of the materials of the building; ſo alſo glue although it is not wood, faſtens pieces of wood together. And the nearneſs of blood which my mother contracts from her father and transfers to her ſon is, as it were, the glue by which he grandfather's kingdom is joined to the grandſon. In this way, too, ſound is the medium by which a word is tranſmitted to the hearing, and a contract is the medium by which the proprietorſhip of any object is transferred from owner to purchaſer. Wherefore let not the arguments, which my mother and her uncle have framed, any longer ſtand in the way

of my title, ſince neither in my mother's lifetime nor after her death do I aſſert that it is in right of her that my grandfather's kingdom belongs to me. Thus alſo does my title to the kingdom in diſpute ſtand forth clear to thee, O beſt of Judges; while at the ſame time, however, I can plainly prove that my mother cannot ſucceed to it, which I ſhall attempt to do as follows.

Chap. XVII.

The Son intends to confirm only his own aſſertions.

THE two arguments which my mother has juſt now ſo cleverly refuted were not both propounded by me. This only do I acknowledge to have ſaid, that a woman cannot, according to the law of nature, ſucceed her parents in a kingdom which acknowledges no ſuperior, as ſhe can in the caſe of other property; which aſſertion if I be able to prove concluſively, my grandfather's kingdom is mine by right, and my mother and uncle will give way in this diſpute, provided neither of them be able to diſprove that I can ſucceed my ſaid grandfather in the kingdom even in my mother's lifetime.

Chap. XVIII.

He here ſhows how Woman was created ſo as always to be ſubject to Man.

IT is written in the firſt chapter of Geneſis that God, when about to make man, ſaid, "Let Us make man in Our image, after Our likeneſs, and let him preſide over (*præſit*) the fiſh of the ſea, and over the fowl of the air, and over the beaſts of the earth, and over the whole creation, and over every creeping thing that creepeth upon the earth;" and in chap. 2: "So the Lord God therefore formed man of the duſt of the ground, and breathed into his noſtrils the breath of life, and man became a living ſoul;" by which ſayings we are perfectly inſtructed that at the ſame inſtant in which the firſt man was made he was alſo made the image of God and preſident (*præſidens*) of the world, the woman not having yet been formed; all which things are explained more clearly in the former Treatiſe. Then, after woman was formed, the Lord ſubjected the earth to both the man and the woman, and gave to them, in common, dominion (*dominium*) over all its living creatures, ſaying, "Be fruitful and multiply, and repleniſh the earth and ſubdue it, and have dominion over (*dominamini*) the fiſh of the ſea and over the fowl of the air, and over every living thing that moveth upon the earth"—not taking away from the man by theſe words the prelacy (*prelatiam*) with which He firſt diſtinguiſhed him. For though both the man and the woman by theſe words received *dominion* in common over all the living things of the earth, ſtill it was fitting and good that only one of them ſhould have the *prelacy* over the

world; becauſe, as the Philoſopher ſays in the firſt book of his Politics, man, who is a political and ſocial animal, is not able to live well in ſociety without one to preſide and rule. Thus, too, though the citizens of every ſtate live in ſocial union, yet one of them always has the chief power, and him all the other citizens obey. This preſidence of the firſt man, St. Thomas, in Prima Secundæ, Queſtion 96, Article 4th, and likewiſe in the third book of the De Regimine Principum, calls natural dominion, which was exerciſed over the woman, and conſiſted in adviſing and directing her. Hence it follows that the man had at that time a double dominion—one in common with the woman over all the living things of the earth, the other by himſelf alone, namely, the ſupreme dominion, which we here call the prelacy over woman and all thoſe living things; juſt as we often ſee that ſtates have dominions in common, but the ruler of the ſtate preſides not only over thoſe dominions, but alſo over all the citizens of that ſtate. But the Maſter of the Sentences, upon the 1ſt Epiſtle of Paul to the Corinthians, chap. 11, ſays, "No one doubts that man was made in the image of God, not in reſpect of his body or any part of his ſoul indifferently, but in reſpect of his rational mind, wherein there can be an apprehenſion of God, which lies in the ſuperior part of the reaſon (and nothing is an image of God except that which inheres in unchangeable truth): and this mind, on account of its union with the fleſh, whereby itſelf and the fleſh are one man, is called man made after the image of God." And from theſe words we are able rightly to underſtand that the firſt man, who was a rational mind, whom the Lord placed over (*præfecit*) the whole creation, was alſo ſet over (*prelatus*) his own body, and therefore over us too, who were at that time ſeminally contained in him. He was alſo by his origin ſet over the woman, who was then contained in him potentially, a fact which we feel ourſelves in that we then ſinned in him and through him, and which the woman felt alſo, for he ſays to the ſerpent, "Of the fruit of the tree which is in the midſt of the garden God hath commanded us not to eat." For at the time when that command was given the woman had not been formed; yet in theſe words ſhe acknowledged that at the time of that command ſhe was in Adam, to whom alone that command had been made known. Wherefore at that time ſhe was herſelf, like all the members of Adam's body, though in a different way, ſubject to Adam's authority. For though the Lord created all things out of nothing, yet nothing was not made ſomething, but that which had before exiſted in creative and obedientiał power was by the Divine creation produced from potential eſſence into actual exiſtence. Of this kind of production the Philoſopher ſpeaks in the 11th Book of the Metaphyſics, where he treats of generation which takes place out of an *ens in potentiâ*. Now the woman, who by the ſaid potential entity was hidden in the rib of Adam, was formed into the ſubſtance of woman out of that rib which at the time exiſted by actual entity as the bone and fleſh of Adam. Wherefore that rib was not reduced to nothing, but ſtill retained the actual eſſence, which it had before, though in a different way; juſt as Adam himſelf, when made man, did not loſe the ſubſtance of the earth of which he was formed; wherefore the Lord ſays of him,

after he had ſinned, "Duſt thou art, and to duſt ſhalt thou return;" and Adam acknowledged this himſelf, in that he ſaid of Eve, as ſoon as ever ſhe was made, "This is now bone of my bones and fleſh of my fleſh," ſhowing by theſe words that, inaſmuch as ſhe, after her creation, was ſtill no other than the ſame fleſh and bone which had before exiſted in him, though in a different form, ſhe remained, even after her removal from Adam's body, ſubject, though in a different way, to the ſame bond of ſubjection to which ſhe was humbled when ſhe was yet contained in his body; wherefore alſo he ſays, "She ſhall be called woman" (*virago*). This name the woman received from him paſſively as his ſubject, juſt as the other living things of the world alſo received their names from him as from their head (*prælato*); for in old times none but ſuperiors and parents are ſaid to have impoſed names upon men. Whence God alone impoſed a name upon the firſt man, who had no ſuperior, and called him Adam (Geneſis, 5th chap.). And this name, *woman*, furniſhes no ſmall matter of humiliation to the woman, as will be clearly evident to any one who carefully conſiders it. Neither can the fact that ſhe was made for the help of man call her to the performance of any great ſervice; for he who is appointed as a help to another man is ordained to perform what is good and advantageous for the latter, which is proper to the duty of a ſervant; ſo that a wiſe man will conſider ſuch help to differ very little from ſervitude. And if woman has been made for the ſake of man, ſince, as the logicians ſay, of two things the one for the ſake of which the other exiſts is the greater, the man was ſet over the woman on account of being greater than her, and therefore ſhe was placed beneath him in rank, and owed him obedience as to one who was ſet over her, according to the command of the Apoſtle, who ſaid, "Obey thoſe who are ſet over you." And indeed if it be conſidered for what kind of a help for man woman was created, it will contribute not a little to leſſen this diſpute. For though ſhe was formed to help man by way of conſolation, and by avoiding of lonelineſs, as is ſhown by the words of the Creator, who ſaid, "It is not good for man to be alone," that ſhe was alſo formed to help him in the procreation of the human race, the care of which belonged to the firſt man as to God's image, has been maintained in the writings of Hugh de St. Victor, in Book 6, De Sacramentis, and alſo by many other Catholic Doctors. For man is not the image of God on this account, that he bears in his ſoul that moſt ſpecial image of God which conſiſts in thoſe three powers, memory or mind, underſtanding, and will, in which, as in a mirror, he can behold the image of the Moſt High Trinity; for woman, like man, bears theſe powers in her ſoul, and an angel alſo bears them, neither of whom is the image of God, nor made after his image. For concerning woman it is written in the Canon (Cauſa xxxiii., Quæſt. 5, Cap. *Hæc imago*): "So woman was not made after the image of God;" and a little further on, "The woman veils her head, becauſe ſhe is not the image of God." Likewiſe, concerning both the woman and angel, Vincentius, in the ſecond book of his Speculum Hiſtoriale, writes thus:—"The woman, though endowed with reaſon like the man, is nevertheleſs ſaid to be the glory of man, but not

the image of God, in like manner as an angel." But that the man, I will not ſay was made after the image of God, but is the image of God, the Apoſtle, in his 1ſt Epiſtle to the Corinthians, chap. 11, bears witneſs, ſaying, "The man indeed ought not to cover his head, ſeeing that he is the image and glory of God;" and we nowhere read that this was written of any other creature. But if we conſider why man and not woman is the image of God, it will be moſt manifeſtly evident that the woman always was and ought to be ſubject to the man; alſo that ſhe cannot have ſupreme dominion over the man, and therefore cannot reign in the kingdom concerning which our preſent queſtion ariſes.

Chap. XIX.

He here ſhows what is meant by Man's being made after the Image of God.

THE ſaid Hugh, in the ſaid book, writes thus: "Now God created one firſt man, in order that there might be one beginning of the human race, ſo that herein the Devil's pride might be put to confuſion, and the humility of human nature might be glorified by reſemblance to the Divine image." And a little further on he adds: "So that herein alſo the image of God might appear in man, that, as God is the beginning to all the things of His creation, ſo man might be the beginning of generation to all men, and all men, while recognizing that they proceed from one and are one, might love one another as being one. But afterwards woman was made out of man himſelf in aid of generation; ſince, if ſhe were made from any other ſource, there aſſuredly would not be one beginning of all men." Theſe are his words. And in the Canon aforeſaid it is thus written: "This image of God was made in man, that there might be made one man, from whom all the reſt ſhould ſpring, holding God's empire as His deputy, becauſe he has the image of the one God." From theſe writings we apprehend that there are two cauſes why man, and not woman, is the image of God: one, becauſe, as all creatures are created by one God, ſo from one man ſhould proceed the generation of all men. The ſecond, becauſe, as God rules all the creatures which He has made, ſo man too ſhould rule all men generated by him, and the world alſo as God's deputy. And theſe things cannot be ſaid of woman, ſince from no woman have all men been born. For a woman did not give birth to Adam and Eve. Nor did the Lord give to any woman the power of ruling the world, ſince ſhe is not the image of God. Now a woman is able to bring forth and to conceive, but by no means to procreate. For procreate is a word compounded of *pro* and *creo*, as if that power were given to man in the place of the power of creation. Wherefore, in this reſpect he bears the image of God, and though woman, in the conception of man, juſt as the earth in the creation of the firſt man, furniſhes the material in which and of which man generates the offſpring which ſhe conceives, yet ſhe does not herſelf procreate that offſpring, even as the earth did

not create the firſt man; wherefore, in this reſpect, every man, and no woman, bears the image of God. For, as the Philoſopher ſays, man's ſeed is to woman's ſeed, in generation, as the hand of the potter to the earthen veſſel, as the hand of the carpenter to his wooden materials; which, together with ſome other of the aforeſaid matters, he clearly demonſtrates in his De Animalibus, and eſpecially in Book 15 of the ſame. Another equally good ſimilitude for theſe things is furniſhed by the mould of the cheeſemaker, who transforms milk into cheeſe. The Philoſopher alſo ſays in the 7th Book of the Metaphyſics, that man's ſeed acts with reſpect to generation as art acts with reſpect to things artificial. And ſince to govern the world and to procreate men is to be the image of God, woman, who is not the image of God, nor made after His likeneſs, cannot rule the world, even as ſhe cannot procreate men, ſince theſe are the works of God's image alone, and conſequently ſhe cannot poſſeſs the kingdom now in queſtion, which knows no ſuperior. Yet, in order that theſe things may ſtand forth more clearly, I will bring them together ſuccinctly into a ſort of ſummary, ſo that we may ſee more plainly what follows from the foregoing.

CHAP. XX.

Epilogue ſumming up the things which have been ſaid in the laſt two Chapters.

IN the firſt place, we ſhowed how, before the creation of the human race, it was predeſtined by Divine forethought that the woman ſhould be ſubject to the man, ſince it is written that God ſaid, "Let Us make man, and let him be over the whole creation." For not only was the man, as ſoon as he was created, ſet over the living things and plants at that time made, but that firſt man had alſo the right of dominion over their progeny yet unborn, and their ſeed not yet produced, when and as often as thereafter they ſhould come forth into real and actual being; ſo, too, it has been proved above that, as the firſt man was ſet over us, though then lying dormant in ſeminal eſſence, he was alſo ſet over the woman not yet formed, but capable of being formed out of his bones, exiſting in the potential and obediential eſſence of woman, not brought forth into real and actual being. And inaſmuch as St. Auguſtine ſays, in the 83rd book of his Queſtions, that man was faſhioned after one idea, a lion after another; if, likewiſe, man was faſhioned after one idea and woman after another, it could correctly be ſaid that, before the formation of man and woman was known to the angels, the future ſubjection of the woman to the man was clearly evident in an ideal and typical manner in the Divine Word, in whom all things that have been made were then living. (John, chap. i.). Wherefore by every mode of origin the female ſex was initiated and brought to maturity, that it might be ſubject to the male ſex. Afterwards, that ſex, having come forth into real and actual being, actually ſuffered that ſubjection, as is moſt plainly revealed, in that the firſt woman was made for the help of man, and obediently received from the man a name denoting her ſubjection; the

perpetual obſervance of which obedience the Lord by the ſtrongeſt bond compelled, in that He formed the man and not the woman after His image, that is, to rule the world and procreate men; wherefore He appointed the man alone to be His deputy upon earth, who, like God, ſhould not only rule woman and the world, but alſo procreate men. Theſe things now, out of all that has been already ſhown, we have brought together, as it were, into a heap, not to inſtruct thee, the wiſeſt of Judges, to whom nothing is unknown, but that they may become perfectly evident to my mother, who, as we before ſuſpected, knew not the truth of the law as ſhe did of the facts of our caſe. Wherefore let her be contented with reaſon, and without delay deſiſt from this ſuit. And ſince to rule and to be ſubject, uſing the words abſolutely, are oppoſites, and the judgment concerning oppoſites is always the ſame, namely, that when one is granted, the other is denied; ſince nature herſelf compels the woman to be ſubject to the man, ſhe abſolutely prohibits her from ruling abſolutely, that is, univerſally, over man, that is, from having ſupreme rule over him. For I ſay a thing abſolutely which I ſay without adding any condition; for this is the rule of the logicians. And ſince to reign in the kingdom now claimed is to rule over man abſolutely, it is by the law of nature abſolutely prohibited to a woman to reign in ſuch a kingdom. Wherefore, ſeeing that to have knowledge of a thing is to know it by its cauſe, my mother cannot henceforth be ignorant of these things, nor ſuppoſe a woman capable of poſſeſſing a kingdom which acknowledges no ſuperior, ſince ſhe has been now moſt clearly indoctrinated upon this matter with ſo many and ſuch fruitful cauſes.

CHAP. XXI.

The Woman is by nature ſubject to the Man.

THE foregoing truths have not been drawn from Nature's ſtreams remotely flowing, which in their headlong courſe have become mingled with certain impurities, but have been taſted in the ſpringing fountain of human nature itſelf, in whoſe baſin, through the medium of the living waters leaping up therefrom, we have beheld by the light of Holy Writ how human nature flowed originally from the Divine; which, when creating it formed it into twin ſexes, the male and the female, appointing the male to bear command, and laying it upon the female to be ſubject, and ſo honoured that ſex with that burden for ever; and thus this is determined to be the law of woman's nature. From this fountain then we have drawn the truth, that for a woman to have abſolute rule over a man, that is, to govern him and not be ſubject to him, is unnatural, and a ſubverſion of the order which nature ordained when maturing the human race. Wherefore, ſince the Apoſtle ſays (Rom. 13th chapter), "Now the things which exiſt have been ordained by God," whereby it follows that all things which have not been ordained are to be accounted not of God, in proving that for a woman to have abſolute dominion over a man is contrary to nature's rules, we have alſo

proved that ſuch predominance is not from God. And ſince our Lord ſays, "Every plantation which my Father hath not planted ſhall be rooted up," it is the Divine ſentence, and therefore ought to be thine alſo, O holieſt of Judges, that if a woman intrude herſelf into a kingdom which acknowledges no ſuperior—which is to rule and not to be ſubject to man—ſhe ought to be expelled therefrom; from which it alſo follows that ſhe has no right to obtain ſuch a kingdom. And if ſhe has *de facto* poſſeſſion of ſuch a kingdom, not only ought ſhe to be expelled therefrom, but ſo long as ſhe holds it, ſhe deſerts the order of her own nature; and this is nothing elſe than to ſin, ſince ſin is nothing elſe than the undoing of the order of nature, or the abandonment of the univerſal order of things.

CHAP. XXII.

Examples which merely relate facts cannot prove that Women ought to reign.

BUT, O moſt learned of Judges, let not my mother preſs thee with the examples of great things which women have done, ſince to thee the cauſes of prodigies are no leſs known than thoſe of natural events. For thou knoweſt that Deborah, whom my mother mentioned, was a holy woman and a propheteſs, who by merit of her holy way of life excelled in wiſdom her own huſband and all the children of Iſrael. So alſo Judith, a moſt chaſte woman, having lived a life of the ſtricteſt auſterity, outſhone all the inhabitants of Bethulia in the miniſtry of counſel; wherefore in the Divine purpoſe ſhe was deemed worthy to take off the head of the tyrant Holofernes, whereby alſo ſhe put to flight the army of the Aſſyrians. Yet her example does not ſtir up to battle women, who are by nature timid and weak. So neither do the deeds of Deborah, which were the operations of extraordinary gifts of grace, prove that women ought to be appointed judges, as Deborah was. Daniel, when a young boy, gave judgment moſt equitably upon aged judges, yet this example affords no grounds for ſetting youths on the judgment-ſeat. Balaam's aſs ſpoke, but he doth not ſet other people's aſſes an example of ſpeaking. Divine miracles or prodigies, therefore, which the Lord, who, as He wills, can form creatures other than thoſe already created, has worked beſide or beyond the powers of nature, avail us nothing in our contention concerning the courſe of nature and her deciſion. And why is the victory of the Queen of the Maſſagetæ, ſhe who ſmote down Cyrus, propounded to us? Was not that Cyrus, the man of whom Iſaiah propheſied that the Lord ſhould go before him and ſhould ſcatter the nations and put kings to flight, and ſhould accompliſh by his means great and marvellous things? His name, too, the Prophet announced before he was yet born, and called him the Anointed Lord (*Chriſtum Dominum*). And although theſe things were accompliſhed concerning him, yet did he not attribute them to the virtue of God, but to his

own power. Did he not then deſerve to learn that he could not conquer even a woman without God's help? Wherefore that woman Tomyris, Queen of the Maſſagetæ, ſlew that Cyrus, who had ſlaughtered ſo many men, now that he was by reaſon of his pride left deſtitute of God's protection, though fenced round about with a great army; and in reprobation of his crimes ſhe encloſed his head in a glaſs bottle filled with blood, and round the veſſel had theſe words written: "Thou haſt thirſted for blood, therefore drink it." My mother likewiſe brings forward the example of that moſt impious woman Semiramis. Was not that Semiramis the wife of Ninus, the ſecond king that reigned in Aſia? And did ſhe not after his death uſurp his empire, and, that ſhe might reign in greater ſafety, unite herſelf by the nuptial bond to her own ſon? of whom St. Auguſtine, in the 18th Book of the De Civitate Dei, writes: "Semiramis, wife of Ninus, was ſlain by her own ſon Ninus, becauſe ſhe, the mother, dared to pollute her ſon by inceſtuous intercourſe." For although this woman thruſt herſelf upon that kingdom, yet ſhe poſſeſſed it by no title whatever; nor can the deeds of ſo vile a woman excite us to imitate her acts, leſt, as her inceſt ſhows us the worſt kind of incontinence, ſo her ambition ſhould invite us to the moſt iniquitous kind of exaltation. The kingdom, alſo, of the Amazons, the only one in the world which we read to have been governed by women, can have no poſſible influence upon thee, moſt excellent Judge! For, as the proverb ſays, one ſwallow does not prove that ſpring has come; and the Philoſopher ſays that that part is bad which agrees not with its whole. Now it would be more fitting that the Amazons ſhould conform themſelves to the other regions of the world, than that all the kingdoms of the world ſhould give themſelves up to the rules of the Amazons. Nor, indeed, can a female government, which is only ſet over women, ſtand in the way of my arguments, which reject the exerciſe of command over men only. Moreover, the name and the race of the Amazons, as Diodorus Siculus ſays in the third book of his Ancient Hiſtories, are now extinct, their laſt Queen of eminent virtue being Penthefilea, who was killed by Achilles in the Trojan war, a deſtruction which, it is believed, would never have come to paſs, if their condition had been for the honour of the univerſe. But what profit do theſe facts and events that have happened, bring to us who are diſputing about the deciſion of reaſon? It is reaſon that corrects facts, but facts never change reaſon; for facts may ſhow what has been done, but it is reaſon alone which informs us what ought to be done. Therefore, if the arguments which we have urged are valid, they cannot be diſproved by bygone facts.

Chap. XXIII.

Such Women only are ſubject to Men can govern Men.

AND moreover, when my mother ſays that the daughters of certain Dukes, Marquiſes, and Earls, who rule their ſubjects like Kings, ſucceed their parents in their dignities and domains, and that between their titles and my mother's right there is no difference to be found, ſhe does not rightly diſtinguiſh between titles of that kind and the caſe which we are ſifting. No one ever doubted that women of rank poſſeſſing great domains, and other women alſo, often govern men. Thus a mother governs her ſon, a matron her houſe, and an induſtrious wife the houſehold of her huſband. For the law of nature does not prohibit ſuch women as are ſubject to men from ruling men; nor is this contradicted by our diſcuſſion, which will only decide concerning ſupreme government. For woman was made for the help of man; and ſince, after God, man is the chief of the world, it is fitting for the woman made for his help, in the exerciſe of her duty, to apply his patronage to herſelf, as pleaſeth her beſt. For man rules thoſe whom he governs by means of others. Wherefore, all men alſo, whom women ſeem to rule, are ruled by the men to whom thoſe women are ſubject, even as God rules all the creatures whom man has been ſet over. Wherefore the author of the De Cauſis ſays, that whatever a ſecond cauſe can do a firſt cauſe can do in a nobler and loftier manner. Hence, when God intended to make woman for the help of man, He ſaid, "Let Us make a help for him like unto himſelf;" and he does not ſay like unto Us. But man was made for the help of God, namely, to rule the world as His deputy, being created after the likeneſs of God. But woman, being made for the help of man, is ſaid to have been made like, not unto God, but unto man, becauſe ſhe is not, as man is, like to God, who has ſupreme authority over all things, ſince ſhe is unable to exerciſe ſuch ſupreme rule; but as ſhe can rule all things under man, ſhe has been made like to man who rules all things under God. Wherefore in Geneſis, chap. v., it is thus written, "This is the book of the generation of Adam; in the day that God created man, in the likeneſs of God made He him; male and female created He them." He ſays that both were created, but he ſays that man alone was created after the likeneſs of God. So, too, in the firſt chapter of the ſame Book it is written, "God created man after His image and likeneſs, in the image of God created He him, male and female created He them." And he does not ſay that both were created after the likeneſs of God, no more than after His image. Wherefore nature doth not ſay that women ſubject to men cannot rule men, and thus ſhe does not forbid women to ſucceed to Dukes, Marquiſes, and Earls, who are ruled by ſuperior lords, or to rule the men of their domains. Nevertheleſs the Civil Law does not allow them to ſucceed in the domains of ſuch perſons; nor does the Apoſtle allow

them to rule over men (1 Timothy, chap. ii.) But for the preſent we paſs theſe things by, becauſe we ſhow them more clearly in what follows; nor do the points which we have now conceded refute the words of my great-uncle, in which he above aſſerted that women are by nature framed only for domeſtic cares; becauſe, though in ſubordination to men they are able to tranſact public buſineſs alſo, yet they are not made for it as for domeſtic duties, ſo as to be ſufficient to perform it by their own powers. For women are kept back from the brunt of war by timidity, from cares of ſtate by ſlenderneſs of underſtanding, from the labour of tillage by tenderneſs of frame, and from mercantile affairs by a certain kind of heedleſſneſs; and thus they are prevented from exerciſing any kind of adminiſtration, except the care of houſehold matters, by a ſort of natural defect. Whence women are not permitted to manage theſe things, except under the care of men, and under their direction. Wherefore, alſo, nature has ſubjected them to the rule of men; and thus obeying men they are able to govern men, becauſe then their government is not deemed to be that of women, but rather that of men. Wherefore the examples which my mother has laid down concerning the daughters of Dukes and other lords—which, however, ſome laws do not allow—do not prove that thoſe daughters, though when ſubject to men they may rule men, can alſo rule a kingdom which obeys no ſuperior.

REPLICATION OF THE KING'S BROTHER TO THE ALLEGATIONS OF HIS NIECE.

Chap. XXIV.

The natural infirmities of Women do not exclude them from governing, but ſhow the cauſe why they are excluded.

THE king's Grandſon having now ceaſed ſpeaking, his Brother forthwith began as follows. I do not, as the king's Daughter imagines, aſſign the imperfections and infirmities which women ſuffer to be the cauſes which exclude them from the exerciſe of the higheſt powers of government, but I aſſerted that their deficiency in thoſe natural excellences of which women have a ſmaller ſhare than men may ſhow the cauſe which permits them not to hold ſupreme authority; for we cannot doubt that the Divine will which ſo created them is that cauſe. That will, however, we cannot by our natural powers of viſion directly perceive, ſince it is above the ſcope of the human underſtanding; ſo that we can recognize it only by the effects of its working, by examination of nature. But

that in this way we can underſtand it the Apoſtle teaches us, ſaying, (Rom. i. 20), "The inviſible things of God from the creation of the world are clearly ſeen, being underſtood by the things that are made;" becauſe by ſuch ſearchings all creatures confeſs God and ſpeak His will, as the words he utters ſpeak the will of a truthful man. In like manner, too, the Philoſopher ſays that from the effect we arrive at a knowledge of the cauſe; wherefore, ſince there cannot be an infinite progreſſion of cauſes, the Philoſopher himſelf by natural diſcourſe of reaſon arrives at a knowledge of a firſt cauſe, which is God; from which it alſo follows that none but the fool can ſay in his heart, "there is no God." Wherefore, when I ſhowed that the woman's ſex is left behind by the man's in powers, in ſtrength, and in other natural excellences, I ſhowed alſo the Divine will by which each ſex was formed, and, from the effects of its operation, I diſcovered this to be the cauſe why women cannot rule in a kingdom which acknowledges no ſuperior, inaſmuch as the harmonious order of the univerſe ſuffereth not by any means the leſs to be over the greater, or the leſs perfect to rule the abſolutely perfect. And thus I gathered from the footprints of God that which the king's grandſon drew from the fountain of human nature. He hunted theſe things on the hills, but I caught them in the valleys. For thus Wiſdom cries in the ſtreets, ſaying, "If any man love wiſdom, let him come to me and he ſhall find it." So that there is no creature ſo ſmall as not to declare God to be its maker, and which doth not by its qualities, form, and powers, make known the cauſe why the wiſdom of the Creator ſo faſhioned it. But becauſe theſe things, as well as thoſe with which the grandſon aforeſaid wound up his ſpeech, are explained by human reaſons only, into which error may creep unawares and lie concealed, I will endeavour by the Divine ſentence alſo, which is clear of all error, to ſhow that woman cannot reign in the kingdom concerning which we are contending.

CHAP. XXV.

That a Woman cannot reign ſupreme is pointed out by the Divine ſentence.

WE read in Geneſis that, after our firſt mother was ſeduced by the guile of the cunning ſerpent and did eat of the fruit of the tree of which man was forbidden to eat and had given of it to her huſband and he too did eat, ſhe being queſtioned by the Lord as Judge, acknowledges her fault, and ſays, "The ſerpent beguiled me, and I did eat." Then, after the Lord had condemned with a triple penalty the ſerpent for his wickedneſs, by a final ſentence He puniſhed the woman alſo for her fault with a double puniſhment, under theſe words (Gen. iii. 15), "I will multiply thy ſorrows, and thy conception; in ſorrow thou ſhalt bring forth children,"—Behold one puniſhment,—"and thou ſhalt be under the power of thy huſband, and he ſhall rule over thee." Behold the ſecond.

Finally the man alſo, who likewiſe had deſpiſed His command, the Lord then afflicted with the miſery of labour and ſweat, as that Book ſhows ſtill more clearly. Now theſe Divine ſentences not only bound with their ſtrictneſs thoſe individuals to whom they were propounded, but faſtened with a perpetual chain the kinds, ſpecies, and ſexes, and alſo the individual offspring that ſhould proceed from them. Wherefore, juſt as the offspring of the man did not from that time forth eat its bread without labour, nor any woman with child by a man eſcape the ſorrows and pain of delivery, nor the brood of any viper find peace with the ſeed of the woman, ſo no woman anywhere from that time has been able to throw off from her neck the yoke of man's power and of his dominion. And as that yoke preſſed upon our firſt parent, ſo, too, the ſame yoke has humbled and for ever humbles all her daughters; ſo that there has not been, and will not be for the future, any woman whom this Divine decree has not bound or will not bind. And as this ſentence directed every woman to be under man's power and authority, ſo that a woman ſhould not be under the dominion and power of man is by the ſame ſentence interdicted; for one of thoſe contraries being commanded, the other muſt needs be forbidden. But for a woman to reign in a kingdom which acknowledges no ſuperior, is not to be under the power and dominion of man, which is contrary to the Divine ſentence aforeſaid. Therefore ſhe is prohibited from ſo reigning by the definitive ſentence of God. Theſe things are open and clear, and not obſcured by any veil of ſophiſtry. What, then, remains to be proved, in order that a woman may be rejected from ſuch a kingdom? For it is proved above that ſhe is rejected therefrom by the law of nature, and now it is alſo ſhown that ſhe ought by the Divine ſentence to be excluded. Beyond theſe, therefore, we need no farther arguments. But as in the former Treatiſe we concluded that this diſpute may be ended by the laws of nature alone, it becomes me to ſhow why in its diſcuſſion I have brought forward the Divine law beſides. For if in this examination the law of nature ſuffice, it is vain to flee to the protection of another law, eſpecially ſince no error can lie ſo ſecretly concealed that a perfect law will not detect it; and if the law of nature be not perfect, it is difficult to give a reaſon why we have concluded that it is capable of ſetting this ſuit at reſt. It will, therefore, be expedient for me now to declare myſelf ſomewhat more plainly in theſe matters.

Chap. XXVI.

Wherefore the ſentence of the Divine Law muſt now be traced.

ALTHOUGH the ſentence of the law of nature is of force ſo great that it ſtands in no need of the defence of another and a human law in earthly things, yet, ſince it cannot be known except by diſcourſe of reaſon—and ſo, if the author of the foregoing ſhall have gone aſtray from the right path of reaſon, the things which he

ſets forth cannot be called the deciſions of the law of nature, but of the Writer—it ſeems not uſeleſs for us to examine in this litigation the ſentence of the Divine law alſo, which, rooted in the firm foundation of faith, cannot be ſhaken by the fickle motions of reaſon. For it is more exalted and of greater authority than human law, and by it is all human opinion meaſured, and, if it be juſt, approved, and, if unjuſt, moſt juſtly condemned. Wherefore, if the Divine law ſhall itſelf, in the matters above diſcuſſed, have decreed to the ſame effect as the law of nature ſeems to judge, the king's daughter will know at once that by every right ſhe is excluded from her father's kingdom. Yea, perchance, in this ſcrutiny, ſhe will find that the Divine law repels her by ſetting up againſt her a weightier charge than the human. For although that ſentence of labour and ſweat ſeems to have been pronounced upon the man alone, it would be profane to think that the female ſex was exempted from it. For as in Adam all his ſeed of both ſexes ſinned, ſo too all his offſpring ſhare in the penalty laid upon him, ſo that in bearing that penalty no diſtinction is made between males and females. Wherefore the only queſtion left is concerning Eve, whether the penalty decreed againſt Adam overflowed upon her; ſeeing that ſhe ſuffered other penalties widely different from Adam's, and ſuch as could not hurt the male ſex, and ſeeing that Adam could not have made her, who poſſeſſed a free will like his own, guilty of ſin without her having ſinned in her own perſon, and ſo could not have implicated her in the puniſhment of his guilt. Yet, becauſe we know that Eve, who did eat of the fruit, ſinned againſt the command much more grievouſly than any of Adam's offſpring, who only ſinned in their parent, and yet ſuffer Adam's penalty; and inaſmuch as both our firſt parents were ſtained with the ſame crime, ſo that they were both driven out of Paradiſe and made exiles in this vale of miſery, where neither was ſuffered to get his daily bread without the ſweat of labour; and inaſmuch as, they two being one fleſh, the greater care thus fell upon Adam, leſt ſhe ſhould die of hunger; wherefore ſhe too, who was made for his help, and ſubjected to his authority, could not have endured that he alone ſhould toil for their common ſupport; for theſe reaſons we are not allowed to ſuppoſe that Eve was free and excluded from the penalty laid upon Adam. For the Lord ſpake to the whole human race all the things which He ſpake to Adam; ſo, too, the things which He had ſpoken to Eve, He had ſpoken not to the individual only, but to the female ſpecies and ſex, as that which He ſaid to the ſerpent was ſaid not only to his ſeed, but to all his kind. But in theſe things the ſpeech was Divine and not human; for the Lord doth not always ſpeak in our manner; for He called Adam and Eve by the one name of Adam (Gen. chap. v.), and thus in this ſentence addreſſed incluſively by the name of Adam the whole human race of both ſexes; ſo, too, when he ſaid to Adam, "Duſt thou art, and into duſt ſhalt thou return," He involved Eve alſo in that corruption. Nor is this wonderful, ſince Noah, too, when in human and, at the ſame time, prophetical words curſing Canaan, curſed alſo his father, without expreſsly naming him, who had ſinned more than his ſon. Wherefore no woman, as alſo no man, eats her bread without ſweat; for

The ſentence paſſed upon the Man involved the Woman alſo.

The penalty of original ſin acts more ſeverely againſt the Woman than the Man.

by the name of bread everything neceſſary for human ſupport is deſignated. And inaſmuch as beſides this penalty, which is indifferent and common to both ſexes, the woman ſuſtains other great and grievous penalties by this decree, the form of the Divine judgment evidently ſhows that ſhe ſinned worſe than man. For ſince every judge meaſures the puniſhment of the delinquent according to the meaſure of the fault, as the woman in this Divine inqueſt is puniſhed with a heavier penalty than the man, it cannot be doubted that her crime was greater than his; and the form of the ſentence and the fitneſs of the penalties evidently declare that the exceſs of crime on the woman's part did not conſiſt in this alone, that ſhe not only ſinned like the man but alſo urged him to ſin, but conſiſted rather in this, that ſhe, neglecting the obedience which ſhe owed to the man, preſumed to teach him. And though the judgments of God are an abyſs inſcrutable by us, ſtill as often as the form of His judgments reveal to us their cauſe, it would be the ſin of the ſluggard not to digeſt in our mind and ſearch out that cauſe; for it is a delight to the minds of the pious to ponder the ſacred myſteries of Divine juſtice. And what could have been a more fitting puniſhment for the woman, who for her own pleaſure incited the man to death, than that ſhe ſhould bring forth with pain the man whom ſhe longs to bring forth to life? And what is better fitted to reſtrain the arrogance of a rebellious ſubject, than to ſubject the rebel with a firmer bond to the authority which he hath deſpiſed? For it would not have become ſo great a Judge to deprive of the honour of dominion, on account of his folly, the man who, by the woman's inſult, fell; but inaſmuch as the inferior deſerted her original obedience, it was agreeable to reaſon to increaſe the weight of the ſuperior's power over the contumacious one more ſeverely than before, even if that ſuperior had been guilty of the greater crime. Theſe things, therefore, being duly weighed, the form of the Divine ſentence manifeſtly declares that the puniſhment of the woman in childbirth was cauſed by her having impelled our firſt parent to ſin, and that it was for her diſobedience that ſhe came to be ſubjected to the man as a maſter, to whom ſhe had before ſubmitted only as a companion. What then, if theſe things be rightly conſidered, can ſhow more clearly than doth this ſentence of the Creator which ſo condemned the woman for contempt of natural ſubjection, that our previous arguments are free from every veil of error, and that the woman, before her ſin, was by right of nature ſubject to the man?

Chap. XXVII.

How the Divine Law approves the ſentence of the Law of Nature.

Is not then the Divine law opportunely brought into this diſpute in addition to the Law of Nature? The latter left the woman to ſubmit herſelf to the man by her own will; but as ſhe refuſed to do this, the former, curbing her will, compelled her to be ſubject to him by the will of another. The latter decreed that the woman ſhould

freely obey the man; but as ſhe abuſed that liberty, the former, diminiſhing her freedom, ſubjugated her to his authority. The latter taught that the woman ſhould be adviſed and directed by the man; but as the woman, making light of this, preſumed to teach the man, the former appointed him from henceforth to be a ſtricter ſchoolmaſter than he had been before. The latter often hides itſelf under the clouds of human reaſon, but the former, diſcloſing the truth of the other law, cleanſes it from every infection of error. Is not, then, the Divine law fittingly and uſefully adduced in aid of our diſpute, ſince all the things which the king's grandſon, and likewiſe I myſelf, have tried to enforce by the rules of the law of nature, the Divine law, under the form and with the effect of poſitive decree, approves and confirms; while it alſo eliminates every ſuſpicion of error from the proceſs of our diſcuſſion, and purſues and ſmites with its cenſure all opponents; and thus it is clear that all the things which we have aſſerted the law of nature to enact are now commanded to be obſerved for ever under a ſtronger bond by the law Divine. For we have ſaid that human law has enacted that the woman be ſubject to the man. But in order that the woman may never throw off that yoke, Divine law has conſtituted the man her maſter; ſo that if ſhe refuſe to do willingly what nature hath decreed, ſhe may be compelled to do it by the power which the Divine law has conferred. Man has been made lord of the woman, that ſhe may not be aſhamed to venerate him, and he has been endowed with power, that, if ſhe rebel, he may be able to compel her to obey. And thus hath the Lord hired the man with perpetual wages, the ſtipend, namely, of power and the honour of lordſhip, that he may prevent the woman from further tranſgreſſing the precepts of nature's law. And what more reſults from this Divine judgment in aid of this diſpute, I will endeavour to examine ſtill more deeply.

CHAP. XXVIII.

The Woman is excluded from the Throne more ſtrongly by Divine than by Human Law.

WHATEVER the Law of Nature ordains, if the prince hath alſo by his edict commanded the ſame thing, that edict forthwith binds his ſubjects more ſtringently than the law of nature had done before; ſo that, if any one from that time forward ſhall tranſgreſs ſuch edict, he ſhall not only be puniſhed according to the ſentence of the law of nature, but ſhall pay a greater penalty for contempt of the prince's command. Wherefore, although by the law of nature it be not allowed to kill, ſtill, after that the Lord forbade murder by edict written on the Tables of ſtone, to kill was a much greater crime than it had been before, and ſubjected the offender to a heavier puniſhment. Thus Cain, who had committed fratricide at a time when the whole world was ruled under the law of nature, is not ordered to be ſlain, but is permitted to go forth a wanderer and a fugitive; but after that murder had been forbidden in Mount Sinai, every man guilty thereof was

ordered to be put to death, as we are more expreſsly informed in Deuteronomy. Two chains bind alſo more ſtrongly than one; yea and a triple cord, as the Wiſe Man ſays, is hard to break; wherefore, when the authority of the prince, by definite ſentence, ſhall have judged any one to be puniſhed for his crime, the ſeverity of that ſentence binds an offender more ſtrongly afterwards than the edict of the prince or the law of nature had done before. Whence, though the Divine command had judged him who eat of the forbidden tree to be in danger of eternal death, Chriſt's Paſſion reſcued the elect therefrom; but neither that paſſion nor any other ſatisfaction has to this hour mitigated the puniſhment which, for the ſame fault, the Lord inflicted on man by His definite ſentence. What woman with child ever was delivered without pain? Or what man ever eat his bread without labour? Nor has the ſeed of the ſerpent ever yet found peace with the ſeed of the woman. Therefore, if what the law of nature has laid down concerning the female ſex the Divine decree ſhall alſo have ordained, not only would the ſentence of the law of nature be thereby fenced in the more firmly, but the woman too, when tranſgreſſing it, would be ſmitten with heavier puniſhment. Wherefore, ſince this ſame thing which the law of nature had prohibited hath been forbidden by the final ſentence of the Lord under a heavier penalty, it remains ſolid and firm; ſo that it can by no means be weakened, to the injury of its principal part. Have we not then now diſcovered in this inveſtigation what we ſuſpected we ſhould diſcover—namely, that the woman is repelled from the kingdom in diſpute under hazard of a greater ſin by the Divine law than by the human? But ſhe is alſo put away from it much more ſtrongly and firmly by the above-mentioned Divine judgment than before. For ſince to deſpiſe the command of the prince, ordering the ſentence of the law of nature to be obſerved, is a matter of greater guilt than to neglect the ſimple ſentence of nature, we diſcern it to be far more culpable to deſpiſe the judicial ſentence of the prince, definitely pronounced, ſince ſuch ſentence is proved to bind more ſtrongly than his ſimple edict. And inaſmuch as the Lord has judicially decreed that the woman ſhould always be under the power of the man (which is, not to reign in ſuch a kingdom), the Divine law has made it wickedneſs and ſin to ambition the ſaid kingdom, as the law of nature had made it already, and repels the woman more ſtrongly and more firmly than before from entering thereupon. I do not, then, while alleging the Divine law in this diſpute, appear to retreat from the authority of the Law of Nature, but to follow it more cloſely than before, while I confirm its ſentence by authority of a higher law. Wherefore, O moſt righteous of Judges, prohibit the King's Daughter from any more demanding her father's kingdom, ſince thou knoweſt its entrance to be ſhut againſt her with ſo many bolts and bars, that henceforth all ingreſs thereunto is for her impoſſible.

CHAP. XXIX.

By the Law of Nature alone can the propoſed queſtion be perfectly ſolved.

ONE thing ſtill remains which needs muſt be explained, leſt we appear to expoſe matter of gainſaying to the jealous opponents of this treatiſe. In the former Part of the Treatiſe we ſaid that our queſtion was one to be ſolved by the Law of Nature alone; and now I have unfolded the Divine judgment, and have aſſerted it to be capable of dealing with the queſtion more certainly and more powerfully than the law of nature could do; ſo that it may be aſked why we ſo carefully explored the decree of the law of nature for its ſolution, and conſumed ſo much time and labour in the inveſtigation of nature and the powers of its law, when I have now diſcovered another law more excellent and more efficacious for the ſolution of the ſame queſtion? This is truly a very nice point, and delectable to the minds of the envious; yet has it been ſufficiently diſpoſed of in the former Treatiſe, and its darkneſs moſt luminouſly cleared up, when we therein declared how that, though the Divine law be ſufficient to ſolve all difficulties, yet human laws are neceſſary to put a ſtop to the litigation of men. As the brightneſs of the moon is neceſſary to the night, which brightneſs ſhe doth not pour forth but by virtue of the ſun's rays, and as the ſun, though ſufficient to illuminate the whole world, yet diſtributes not his light to us, except through the medium of the moon, ſo too the Divine law, which is the ſun of truth, doth not, proportionally in the propoſed caſe, illuminate the darkneſs of our ignorance, except through the medium and teaching of the law of nature. And although, in preferring in our caſe the ſentence of the law of nature to the authority of all laws, we ſhall perhaps be ſaid by the ſimple to have preferred it to the ſentence of the Divine law, yet by the judicious it cannot be thought that we have ſo done, ſince no compariſon can be made between a temporal law and an eternal law; for by its infinity an eternal law outſoars all meaſure of human ſenſe. Wherefore, it does not ſeem to have been included by that Canon, which ſays, in general terms, that "natural law holds the firſt place among all ſyſtems of law, in time and dignity," in which words the Canon itſelf does not expreſsly exclude the Divine law, and yet in its general meaning it does not involve that law. Nor is the law of nature merely human, but it is *jus divinum* alſo, as in our other aforeſaid Treatiſe is more fully taught (ſo alſo it is called abſolutely by Iſidore in the 1ſt book of his Etymologies, and the ſame is laid down in the Canon, Dif. *Omnes*); and although it rules earthly things, and ſo is often called human law, it doth not therefore ceaſe to be Divine law; even as the moon, though miniſtering light to the night as the ſun's inſtrument, ceaſes not to be a heavenly body. In like manner, the judgment which I now bring forward, though it be perpetual, and deſerve to be called a Divine law, is not an eternal law, becauſe it took its beginning from time. In like manner, alſo, it

was after that the law of nature had perfectly revealed the truth of our queſtion that the Divine law itſelf was firſt promulgated; and thus, it cannot be ſaid abſolutely that by that law, though it be called Divine, our queſtion has been ſolved, or could have been ſolved, ſince that which has been once ended cannot be ended, juſt as the man once killed cannot be killed. Wherefore, the ſentence paſſed upon our firſt parents does not preciſely finiſh our cauſe; but it proves moſt ſurely that our cauſe had been then already finiſhed by deciſion of the law of nature, which it confirmed, and ſtill confirms. Nevertheleſs, leſt theſe things ſhould ſeem to be ſhadowed in any obſcurity, I will endeavour, ſomehow, to diſcover them yet more openly. We find then that it is not becauſe by the aforeſaid ſentence of God the woman was commanded to be ſubject to the man, that ſhe was originally ſubjected to him; but becauſe, before that ſentence was paſſed, ſhe was enjoined by decree of the law of nature to obey him. And this decree ſhe tranſgreſſed by preſuming to direct the man. Thereupon there proceeded from the Divine counſel, at the prompting of juſtice, that ſentence by which ſhe paid the penalty of her crime, and knew herſelf more certainly than before to be ſubjected to the man. So, too, it was not by force of this ſentence that the doubts and difficulties of our queſtion were originally and entirely ſolved; but it was becauſe they were originally cleared up by the judgment of the law of nature, that that ſentence was afterwards pronounced by the Lord, by which the judgment of the law of nature is endowed with greater ſtrength than it had before. And hence we diſcern that our queſtion is ſolved by the decree of the law of nature alone, and not by the ruling of the aforeſaid ſentence. For not that which confirms, but that which is confirmed, is conſidered to be the efficient cauſe. For thus the things which are forbidden by the moral commandments are not on that account ſins, as though unleſs ſo forbidden they would not have been ſins; but becauſe they were before found to be ſins by the law of nature they were alſo forbidden by Divine edict, and thereby became much more grievous ſins than they were before, and the guilt of thoſe who commit them is aggravated, and rendered ſo much the greater, as they are committed, not only againſt the commands of God, but alſo againſt the dictates of the Law of Nature. And on this account thoſe ſins which were committed only againſt the ceremonial precepts, eſpecially in reſpect of the ſame object, were leſs blameworthy than thoſe which were committed againſt the moral.

CHAP. XXX.

The Divine Sentence ſuffers not a Woman to reign ſupreme de jure: *but the Law of Nature ſuffers her not ſo to reign either* de jure *or* de facto.

MOREOVER the judgment aforeſaid, paſſed upon our firſt parents, and the law of nature are not of the ſame efficacy and force for ſolving our queſtion, nor in deciding it do they produce the ſame or a like effect. For the law of nature, which we have called a ray of Divine Providence, when it divided the human race at its very root into two ſexes, naturally rejected woman from ſupreme rule; and thereby the woman is rendered incapable of poſſeſſing the country now at ſtake; ſo that if ſhe invade, occupy, or uſurp it *de facto*, ſhe is not on that account made its miſtreſs or queen, no more than he is made a huſband who takes to himſelf another man's wife; for that which nature altogether ſeparates cannot be united by art, as is taught by the example given above of wood and ſtone which admit of no junction by glue or mortar. Wherefore, although women may be concerned, yea and run riot in ſupreme kingdoms, yet the law of nature prohibits their inveſtiture with ſuch a royalty. This kind of action is ſpoken of by Boethius, in the fourth book of his Conſolation, following the opinion of Plato, where he ſays, "Plato's opinion is evidently true, when he ſays that the wiſe alone are able to do that which they deſire, but that the wicked, though they act as they pleaſe, are unable to accompliſh what they deſire." For, as is evident to one who profoundly conſiders the thing, the law of nature indicated at the very beginning of man's career, that ſuch a union as the king's daughter deſires to contract with the kingdom in queſtion is not according to the principle of Being (*de ratione entis*), and therefore not in the nature of things, ſince it is contrary to the nature of the formative act (*plaſmationis*); and therefore ſuch a union cannot any more ſubſiſt *de facto* than it can *de jure*. But far different and very diverſe from this effect of the law of nature is the effect which the above-mentioned ſentence works in the deciſion of this cauſe. For that ſentence makes no radical ſeparation between the kingdom in queſtion and female rule, but, finding thoſe two things already ſeparated, it holds them ever after by a kind of penal ſeverity aſunder; and thus it permits not the ſaid union to take place *de jure*; but when ſuch a union can exiſt *de facto* it doth not define. Wherefore it is not in vain, as rivals ſlanderouſly pretend to ſay, that we have with ſo much labour explored the ſecrets, ſtrength, and nature of the Law of Nature. For it is this law alone which is ſufficient completely and perfectly to lay bare the hidden truth which we ſeek, and to lay it open from the very roots; but the judgment aforeſaid, although in a certain faſhion it diſcloſe that truth, doth not reveal it completely; it unfolds it in part, but not perfectly; it lays it open temporarily, but not always; it proves it indirectly, but not directly; it acknowledges it when ſhown, but did not diſcover it at the firſt. But this law of nature, as is ſaid above, works in a far different way,

inaſmuch as it unfolds and reveals this truth conſummately, abſolutely, and perfectly, by its own and not by another's virtue, directly and not indirectly, originally, in fact and in right, in a way in which the above-named ſentence cannot act, which was delivered upon the accident of ſin. Therefore we have rightly aſſerted that this law alone is capable of dealing with our queſtion; and thereto we add moſt properly the Divine law, which confirms its decrees and commands their obſervance more ſtrongly than the human law could itſelf do; yea, and by the vaſtneſs of its authority it will put to flight every doubt and ſuſpicion of error from the judgment of human law. Moſt certain therefore and moſt firm do we diſcern that concluſion to be which is derived ſo uniformly from law at once Divine and human. Judge thou, therefore, O beſt of Judges, according to the judgment not of human law only, but alſo of the Lord thy God.

REPLICATION OF THE BROTHER TO THE LAST ALLEGATIONS OF THE GRANDSON.

Chap. XXXI.

Firſtly the King's Brother refutes the ſimilitudes introduced by the Grandſon.

SUFFICIENT anſwer has, I think, now been made to the ſtatements contained in the reply of the King's Daughter. The time, therefore, demands that I ſhould oppoſe the arguments urged by her ſon, and by virtue of which he thinks he can enjoy the kingdom in queſtion. Very adroitly did the ſon ſtate his title, when he ſaid that he demands his grandfather's kingdom through the medium of his mother, and not as her heir, whereby he thinks that he may evade the judgment of the rule which he himſelf approved, according to which no one can transfer to another more right than is decided to belong to himſelf. But that rule is not ſo much a doctrine of the Civil Law as of the law of nature; ſo that no one, however wily, can by any craftineſs eſcape its truth. And when the grandſon likens his mother to a rope, by which a beam is let down upon a building from above, and to a ſound by which a word paſſes into hearing, and likewiſe to a contract by which the right of ownerſhip in the thing ſold is transferred to the purchaſer, does he not endeavour to prove that his mother is capable of transferring the kingdom of his grandfather to his grandſon, although ſhe herſelf cannot be inveſted with ſuch a kingdom? But the effect of ſuch ſimilitudes proves ſomething very different; for that thing cannot be transferred to another which has never reſted in the perſon transferring. Whence the beam, which

the rope has let down upon the building, once hung ſuſpended in the rope; the word, which has paſſed into hearing, was incloſed in the voice; likewiſe alſo the contract was not void of the right which it transferred to the purchaſer. But the woman, to whom the right of reigning never could belong, as the ſaid grandſon as well as myſelf proved above, could not transfer ſuch a right to the grandſon, ſeeing ſhe could not transfer to another more right than may be diſcerned to belong to herſelf. For no ſuch right was ſuſpended in her, as the beam was ſuſpended in the rope; nor did that right exiſt encloſed in her, as the word in the ſound; nor did the mother embrace in herſelf the right of reigning as the contract did the right of the contracting parties. For the contract takes away the ownerſhip from the ſeller and places it in the buyer. But the woman cannot be the road by which ſuch a right can paſs over to another; ſeeing that for ſuch a right ſhe is not the way, but ſtops the way herſelf. Nor can the nearneſs of blood, which the mother contracts from her father and transfers to her ſon, be likened to glue, as the grandſon ſuppoſes, inaſmuch as the glue which joins pieces of wood together always remains with each piece ſo joined as a medium; which thing the mother is not able to do with the grandfather and grandſon, ſince ſhe cannot touch the kingdom which ſhe would thus join to her ſon. But, (and here is a wonder), I marvel greatly to find that the founders of the Laws ſeem to have foreſeen that very difficulty in which the king's grandſon is now, as in a labyrinth, involved, inaſmuch as they were not content with the Rule of Law ſpoken of above, but among the Rules of Law inſerted another, as if to explain it. It is this: "No one leaves to his heir a greater intereſt than he had himſelf," (ff. De Reg. Juris.) What then can more thoroughly clear up this miſt of ſophiſtry, and cruſh the grandſon's opinion than does this Rule of Law? For it not only, like the other Rule, reſtrains the man who has not an intereſt from transferring it to another, but alſo expreſsly denies that he can leave it to his heir. This Rule therefore takes away almoſt every veil of doubt from the minds of opponents. For a Rule of Law is not a new publiſhing of a law, but a brief ſtatement of a previouſly exiſting right. Whence, in the ſame Title (Law. 1.) it is thus written: "A rule is that which briefly ſtates the thing as it is, not that the right be taken from the rule, but that the rule be made from the right which exiſts." Wherefore, we muſt not think the Rule now brought forward to be man's decree, but an elucidation of the law which then was, that is to ſay, the law of nature, making us more certain of its decree. Concerning theſe matters, therefore, we will diſpute no longer, ſeeing they are now open and clear.

CHAP. XXXII.

The caſe which the Grandſon laid down is not like his own title.

AND what does the Grandſon gain in this diſpute by the ſtatement which, with great truth, however, he makes, namely, that if he had been the king's grandſon not by a daughter, but by a ſon, and his father had died in the lifetime of his grandfather, he, the grandſon, would have ſucceeded to the ſame grandfather by law of nature, through the medium of his father, although that father never had the power of giving or granting the kingdom to another? That, indeed, is all moſt true, but is different from the caſe which forms the ſubject of our diſpute, and ſo gives no ſupport to the grandſon in this controverſy. For the king's ſon is capable of holding the kingdom which is claimed, and in the lifetime of his father has a kind of latent right in it. For, as the Civil Laws ſay, ſons in the lifetime of the father are held to be *quaſi* owners (*domini*). (Inſtitut. De Heredum qualitate et differentiâ. § *Sui autem*). Likewiſe the Apoſtle alſo calls them "lords" when he ſays, "When the heir is a child, he differs not at all from a ſervant, though he be lord of all." Nor would the patriarch Jacob, in the lifetime of his father, have bought his eldeſt brother's rights, if his brother at that time had had no right in the paternal inheritance; nor truly would that prodigal ſpoken of in the Goſpel, have ſaid to his father, "Give me the portion of goods that falleth to me," if at that time no right in his father's goods had fallen to him. In the Kingdom of England, again, a ſon can, in the lifetime of his father, endow his wife out of his patrimony, *ad oſtium eccleſiæ*, provided the father's aſſent be given, but ſuch a ſon cannot do ſo out of another man's patrimony, although that other man give his conſent to the endowing her. And if in the ſame kingdom a grandſon claim an entailed eſtate in the King's Court, though his father ſhall have died in his grandfather's lifetime, the petitioner will ſtate that the right to that eſtate deſcended to his father from his grandfather; becauſe in the father's lifetime the right of inheritance ſteals inſenſibly into the ſon, which, after the father's death, draws to him the whole inheritance. But ſuch a right in the kingdom now at iſſue cannot deſcend to the daughter, ſince ſhe is incapable of holding ſuch a kingdom, and is excluded therefrom by Divine and human law; it can therefore by no title be inveſted in her. Wherefore ſuch a kingdom cannot deſcend through a woman to a grandſon, ſeeing that it could not have deſcended to a daughter, even if ſhe had ſurvived her father. And thus is ſhattered every title which, by reaſon of the ſaid ſimilitudes, the ſaid Grandſon claims for himſelf; for thoſe ſimilitudes, when brought into combination with our caſe, deſerve to be called not ſimilitudes but ſophiſms.

CHAP. XXXIII.

In what manner the Right of Inheritance firſt aroſe.

BUT ſince our controverſy now turns upon the right of deſcent and ſucceſſion, it ſeems uſeful to examine, not only by the rules of the Law of Nature, but alſo by the Divine Scriptures, what kind of right that is, ſo that we may thereby be able more clearly to underſtand whether an inheritance can deſcend from a grandfather immediately to a grandſon. And, if I miſtake not, before the fall of man, the law of nature in no way revealed that right to man. For the law of the deſcent of poſſeſſions was not known to our firſt parents, ſo long as they preſerved their innocence, ſeeing that they then poſſeſſed all things in common, and were therefore altogether ignorant of property which could deſcend. But afterwards, when they forſook their ſtate of innocence, preſently the Lord ſaid to the human race, "In the ſweat of thy brow thou ſhalt eat bread;" in which words was granted to man a property in the things which he ſhould acquire by his labour; as is more fully taught in the former Part of the Treatiſe. For ſince the bread which a man gained by his labour was his own, and no man could eat bread without the ſweat of his own brow, every man who toiled not was prohibited from eating the bread which by his own ſweat another man had acquired; wherefore property in the bread ſo gained accrued only to the man who had toiled for it, and every other man was deprived of any ſhare in it; and in this way property capable of deſcent firſt took its riſe. For our anceſtors taught us to underſtand under the name of "bread," not only what is eaten and drunk, but everything whereby man is ſuſtained; and by the word "ſweat," every induſtry of man. And becauſe property ſo acquired enſues as a compenſation for the ſweat by which the body of the acquirer is enfeebled, the reaſon of the law of nature hath united it to its acquirer, ſo that the property gained might compenſate the damage reſulting from his loſs of bodily wholeneſs; and thus the property takes the place of the man's bodily integrity, which he has loſt, and coheres as an accident to the toiler, and ſo thenceforth accompanies his blood. And yet property is not an accident natural to man, but accrues to him by the rules of the law of nature, and, after the likeneſs of a natural accident, is united to him, not by the ties of the law of nature, as nature had been originally inſtituted, but as nature now exiſts, ſtript of her liberty and priſtine powers in accordance with the requirements of man's deſerts. Wherefore when ſuch a proprietor hath a ſon deſcending from him, a certain right to the patrimony ſo acquired alſo deſcends in the father's lifetime in a latent manner to that ſon, as being a portion of his father's blood and ſo a ſharer in his toil. And, as the flower burſting forth before the fruit is not the fruit, but a token of coming fruit, ſo that right which deſcends to the ſon in his father's lifetime is not a property in his father's patrimony, but an indication of a property which will deſcend, whereby on the father's death all his patrimony, following that right as

the fruit doth the flower, actually descends and imparts itself to the son. But in the father's lifetime, who by his own deed acquired it for himself, it shall not, without his own deed, be torn away from him, nor be capable of transfer to the son by right of succession. Thus the land which Abraham bought descended to his son Isaac, and from Isaac to his son Jacob, as is said above. The city, also, which the fratricide Cain built, his sons, though most wicked men, possessed by the rules of the law of nature. Thus then we have discovered the source of the law of descent and succession; and from this we have drawn how property capable of descent originally took its spring; how, also, that property annexed itself to man; and lastly, how, descending from man to man by right of succession, it infuses itself into each succeeding heir. Nevertheless, the above statements must not be referred to every kind of property, but only to property in immovable and prædial things, which things are lasting as man's nature is. But things moveable and personal, which are not permanent, though gained by labour, do not always pass to heirs, but often to executors, trustees, legatees, and ordinaries, and sometimes to wives and children, to be divided among them, distributed according to various local customs, in various ways.

Chap. XXXIV.

He here shows what Descent is, and what is the nature of its progress.

IN order now that the law of descent, which we have tasted at its source, may display itself to us as a whole, it seems necessary for us to view it in the course of its flow, so that it may be the better seen. And, in order to make progress towards this end, we will first observe that there is a kind of ladder set up from earth to heaven, the steps of which are the causes of everything and of every fact, and the sides of which are Justice and Truth, between which those steps are placed and most firmly fixed. On this ladder march all things, which, under the guidance of the law of nature, either ascend upwards or descend downwards. By means of this ladder philosophers have ascended from the lowest created things up to the First Cause, which is God, and by means of it all the sons of Adam have descended, even to the babe crying in its cradle. By its means the Evangelist Luke, though led by supernatural light, ascended from Christ up to Adam, who was the son of God; and in like manner Matthew also descended from Abraham to Joseph, Mary's husband, of whom Christ was born. This ladder is the royal road of Nature, and if any one going up or down it shall deviate from the track of the law of nature, he goes astray, and over the precipice, walking not in the way, but where no way is. The patriarch and prophet Jacob saw this ladder standing upon the earth, and said, "Surely the Lord is in this place: this is none other but the house of God and the gate of heaven;" and again it is written, "Jacob saw in his sleep a ladder set upon the earth, and the top thereof reaching to heaven,

and the angels of God aſcending and deſcending thereupon, and the Lord reſting upon the adder." (Gen. xxviii.) Aſſuredly, if heavenly ſpirits aſcend and deſcend by this ladder, it muſt needs be that all earthly things ſhould aſcend and deſcend thereby, inaſmuch as they, being weighed down by the bulk of their burden, ſtand in much greater need of ſteps than heavenly ſpirits, eſpecially as often as they make haſte and aſcend to God, who reſteth upon the ladder, which thing they cannot accompliſh unleſs drawn by grace. And as to aſcend is to climb upwards, ſo to deſcend is, no one doubts, to go downwards, ſo that we may deſcribe deſcent to be progreſſion from above by ſteps of cauſation. Wherefore, if anything deſcend not on this ladder ſtep by ſtep, but ſink headlong to the bottom, its lapſe is not a deſcent, but a fall and a downthrow, which things threaten death, and are not the marks of life. For a fall is a deſertion of the law of nature, and ſo tends to corruption, and haſtens into non-exiſtence; as doth everything which refuſes to be led by nature's law. For Nature doth nothing ſuddenly, but ſtep by ſtep, and ſlowly and in ſucceſſion; becauſe it is God alone, as St. Auguſtine ſays, who can act ſuddenly and in a moment. Wherefore, if under the guidance of the law of nature, the kingdom about which we diſpute deſcended from the grandfather to the grandſon, it muſt deſcend to him ſtep by ſtep on this ladder, as nature has decreed that all things which deſcend ſhould deſcend in this way; ſo that no ſtep of the ſaid ladder can be omitted or paſſed over, ſince all progreſs takes place thereby. For otherwiſe a haſtening downwards would be a fall, and not a deſcent, nor a guidance by the law of nature, which directs all things gradually by means of a continued ſeries of cauſes, which are its ſteps. And ſince every fall is a defect, ſeeing it is a defection from nature's guidance, every fall is alſo a vice and a ſin, that is, a tranſgreſſion of the order of nature.

CHAP. XXXV.

The King's Brother here ſhows what are the ſteps of deſcent.

BUT as it has been related that the cauſes of things and of actions are the ſteps by which aſcent and deſcent take place on nature's ladder, it is proper for us now to trace what thoſe cauſes are, in order that we may know alike what the firſt ſtep is, what the ſecond, and what the more remote in deſcent of inheritance. For it is not material or formal cauſes which make the ſteps, by which aſcent and deſcent can take place; they only furniſh the matter and ſubſtance wherein ſuch ſteps are fixed, and by which they are diſtinguiſhed. Therefore, it is only efficient and final cauſes which conſtitute the ſteps by which progreſs upwards or downwards is made. Leonardus Aretinus, in his Introduction to Moral Diſcipline, ſays that there are as many ends as there are actions, and he calls an end that on account of which anything is done. Wherefore, if a man build a

houſe, that houſe is the end of his action, and therefore the builder is the efficient cauſe, and the houſe is the final cauſe. The ſame is the caſe in all actions that a man can think of. Yet man's intention propoſes to itſelf two ends only, that is to ſay, a near and a remote one. For inſtance, a man wiſhes to build a houſe, in order that he may dwell in it; this is the firſt end. He wiſhes to dwell in the houſe in order to eſcape the inconveniences of climate and of enemies; this is the remote end of his intention, though it was the firſt end in his intellect. So, too, every man, juſt or unjuſt, wiſhes to be good, wherefore goodneſs is the firſt end of all human intention; to which end, however, certain intermediate actions appertain which have their own ends, of the kind that we are now diſcuſſing. But every man wiſhes to be good in order that he may be happy (*beatus*), and this is the ultimate end of all human intention. The firſt end is attained by the operation of virtue; but as the acquiſition of the ſecond end is ſupernatural, there is no aſcent to it on this ladder, except the climber be drawn upward by grace. Therefore, the artiſan, when the houſe is built, has ended his action, but the man who hired him to build it has not fulfilled his intent until he has dwelt in the houſe. But inaſmuch as we are now concerned not with the progreſs of intention, but only with the ſteps of action and of things, let us return to the nature of aſcent and deſcent made by way of thoſe ſteps. Wherefore we proceed as follows. Efficient and final cauſes are ſo continuouſly joined together in the actions of men, that there is nothing intermediate between them. For as the builder is the cauſe of the houſe, ſo the houſe, too, before it was built, cauſed him to build it. Thus thoſe cauſes are ſo chained and joined together that nothing intermediate ſeparates one from the other. Wherefore everything which deſcends is hindered by nothing intermediate, but can proceed without break from the cauſe that cauſes [i.e. the efficient cauſe], to the cauſe that is cauſed [i.e. the final cauſe], which cauſes, namely, the efficient and the final, I will not ſay lay down the ſteps, but are the ſteps by which aſcent and deſcent is made on the ladder aforeſaid; and of the cauſes, the efficient is the firſt ſtep, and the final cauſe is the ſecond ſtep. And this final cauſe is alſo the efficient cauſe of the cauſe that follows next after it, and in like manner of the following ſtep; and the following ſtep is itſelf the efficient cauſe of the ſtep that follows next after it. As the father is the efficient cauſe of the ſon, and the ſon is the final cauſe of the father's act of begetting him; the ſon, alſo, is the efficient cauſe of his own offſpring, and that offſpring is the final cauſe of his act of begetting it. The latter is alſo the grandſon of the above-mentioned firſt begetter, and holds the third ſtep in the ladder of nature. And ſince on this ladder nature conducts ſtep by ſtep, ſlowly and ſucceſſively, everything which deſcends, as the grandfather's ſeed deſcends into his ſon, as to the ſtep next to him, and from his ſon into his grandſon, as to the ſtep next to him, and by no means immediately from the grandfather into the grandſon, ſo the grandfather's inheritance, which the law of nature united to him as a kind of accident, whereby it always accompanies him and his blood, doth not deſcend immediately from the grandfather to the grandſon, but deſcends firſt from the

grandfather to his ſon, and then from him to the grandſon, becauſe anything which deſcends cannot paſs by or jump over any ſtep, ſo long as nature always acts by way of ſucceſſion, as is ſaid above. For in this order the ſtrong man by degrees declines into old age, and the infant grows into the ſtrong man. At this pace everything which grows increaſes and decays. Thus ſummer glides into winter, and winter paſſes into ſummer. Thus the heaven makes the circuit of earth, and brings round again in its courſe the day which in the ſame courſe it put to flight. The ſun, which is now ſhining in Cancer, will not ruſh ſuddenly into Capricorn, nor jumping over the Lion will it leap into Virgo, until in its ſucceſſive courſe it ſhall have ſpent a month in Leo. For with ſuch a continuous courſe does nature rule the globe. Wherefore the deſcent of inheritance cannot poſſibly eſcape the law of a ſimilar progreſs. Since, therefore, the kingdom in diſpute cannot by this proceſs deſcend from the grandfather to his grandſon, eſpecially in the lifetime of the latter's parent, and ſince nature forbids the grandfather's daughter to obtain the kingdom, ſo that it cannot deſcend from her to her ſon, it follows that, ſince the grandfather has no other iſſue, the inhabitants of his kingdom ought to proceed to elect a new king, in ſuch manner as ſubjects are accuſtomed to do by the rules of the commonwealth, as often as their king dies without leaving an heir.

CHAP. XXXVI.

There is nothing which doth not depend upon the Firſt Cauſe through an unbroken chain of Cauſes.

MOREOVER, everything which exiſts hath a cauſe of its exiſtence, and that cauſe had another cauſe, which had alſo a third cauſe, by which that ſecond cauſe came into being; in the ſame way from that third cauſe we aſcend by means of an unbroken ſeries of other cauſes up to the Firſt Cauſe, which is God. Wherefore there exiſts nothing which is not, by means of a continued ſeries of cauſes, referred to God. Wherefore, alſo, thoſe cauſes form, as it were, chains whereby every creature is faſtened to its Creator, and upon Him depend, and by Him are preſerved in exiſtence, as the Philoſopher ſays, in the ninth book of his Metaphyſics, "On the firſt principle the heaven and all nature depends." Theſe cauſes are the lines and boundaries along which reaſon runs, and reveals the truth in things doubtful; theſe cauſes form the judgments of men and detect their errors; they teach them to ſhun what is evil, and to cleave to what is good; and, next to faith, they are the moſt perfect rules by which every good man is taught. By theſe hang not only created things, but alſo all right actions. Nothing that is ſhameful is connected by theſe chains, nor is any evil thing entwined therein. Everything is moſt righteous which by theſe bonds is faſtened; nor is there anything from God which doth not hang thereby. Theſe are the golden chains of which Homer ſpoke, and alſo Macrobius, on the Dream of Scipio, who thus writes:

"Any one who looks closely into the matter will find, from the Most High God to the lowest dregs of things, one bond of interdependent links, and one unbroken connection; and this is the golden chain of Homer, which, he says, God commanded to be hung from heaven to earth." By such a chain did the king, whose kingdom is here at stake, hang from God, as also his kingdom and all his possessions. From that king descends the Daughter who now petitions, and to whom all that king's inheritance descends, with the sole exception of his kingdom; and from that daughter descends the Grandson, who is also now a complainant, and to whom, after his mother's death, will descend all her inheritance; and in like manner will take place the descent from the grandson to his posterity through a series of most rightful causes emanating in succession from the First Cause. But just as in a material chain, if one link or joint be taken away, the whole lower part of the chain, which was suspended downwards from the link or junction so removed, immediately falls to the earth, being separated from the other part of the chain which remains uninjured; in like manner also in the metaphorical chain, which we explained, since the law of nature has undone one link or joint, namely, the king's daughter, who was linked on next to the king, by deciding that she was not capable of holding the kingdom, the whole remainder of that chain which was suspended downwards from her, namely, the above-named grandson and all his posterity, has fallen, being separated from the uninjured part of the chain which remains. Wherefore neither the grandson himself nor his future offspring can now be joined to the said kingdom by means of the chain thus snapped in two. Moreover, the several causes in the chain by which the creature hangs from his Creator are relative, just as father and son, who admit of no intermediate. Wherefore there is not in this chain any cause without a thing immediately caused by it; nor a thing caused without a cause immediately causing it. All things also suspended from on high, if the medium whereby they hang be cut in two, immediately fall to the bottom. Wherefore the king's daughter and her offspring cannot escape from this law, but, since the line by which they all seemed suspended from the deceased king has been cut in two by the sword of the law of nature, they have all fallen to the ground, being altogether shut out from the kingdom aforesaid. And since there is nothing, as has been shown above, which is not related to God by a continuous series of causes, nothing which is not united to Him, and dependent upon Him, nothing which is not preserved in being by Him; and seeing that the title which the said grandson puts forward to his grandfather's kingdom, which title he calls his right, is not related, as already proved, to God by a continuous series of causes, and so not linked to God or suspended from Him; from the above statements it is proved to demonstration that that title is nothing, and therefore not of the nature of things; wherefore also it does not deserve to be called a right. In the same way also, since all that is true, all that is just, and all that is good in creation, hang suspended by these chains from the highest truth, the highest justice, and the highest good, which things are God, being firmly linked to Him; inasmuch as that title, which the Grandson calls also his right, is

ſuſpended by ſuch chains neither from the higheſt truth, nor from the higheſt juſtice, nor from the higheſt good, it is neither a true, juſt, nor good title. And hence it alſo follows that for the ſaid kingdom to be poſſeſſed by ſuch a title is an unjuſt thing and a ſin; ſince only iniquity and ſin eſcape the bonds of thoſe chains.

CHAP. XXXVII.

The King's Daughter cannot be the cauſe or medium by which his Kingdom deſcends to the Grandſon.

AND though the deceaſed king was the cauſe of his grandſon, yet did he not cauſe that grandſon without a medium; and therefore that medium ſo ſeparated him from his grandſon, that neither of them was in immediate contact with the other; for that which is joined by a medium only touches the medium, and is by it forced to be at a diſtance from, and not in immediate conjunction with, the thing to which it is ſo joined. Wherefore ſo remote a cauſe cannot form a chain, ſeeing that between the joints of a chain no foreign medium can exiſt. By foreign I mean whatever intervenes and is not cauſed by the things that go before nor cauſes the things that follow, ſo that it doth not reach from what precedes it to what follows it by any cloſeneſs of affinity. Whence, though between the firſt and third cauſe of everything another cauſe is always intermediate, yet ſuch intermediate cauſe is not anything foreign, but ſomething domeſtic and familiar, ſince thoſe three cauſes would not be continuous, if the ſecond cauſe had not itſelf intervened. Wherefore, as the father's royalty affords no cauſe for the daughter to reign, ſhe cannot herſelf confer the right of reigning on her ſon, ſince ſhe is herſelf deſtitute and devoid of ſuch a right; and although ſhe be the natural and domeſtic medium between the grandfather and the grandſon, by which the blood and private inheritance of the grandfather may be tranſferred to the grandſon, yet in reſpect of the kingdom, which is public property, and which the daughter cannot receive from the grandfather nor transfer to the grandſon, ſhe is a ſtrange and foreign medium, not joined to the grandfather and grandſon by any bond of intimacy. As, if a man poſſeſſed of two properties, of which one deſcended to him from the father's ſide, and the other from the mother's, ſhould die without iſſue of his own body, he is then the medium whereby one of thoſe properties is transferred to his neareſt relatives of his mother's blood, and the other to his neareſt relatives of his father's blood, ſo that in reſpect of his father's inheritance the dying man is alien to his mother's relatives, and in reſpect of his mother's inheritance he is alien to his father's relatives, and thus in one ſubject there may coexiſt a diverſity of rights which ſhall deſcend from him in diverſe ways; ſo in the deceaſed king there was the right of the kingdom, which is public, and cannot deſcend to the daughter, while there alſo reſided in him the right of his private inheritance, which his daughter will

inherit after him; and in the deſcent of this private inheritance ſhe is the intimate and natural medium. But though ſhe be always a natural medium between grandfather and grandſon, yet inaſmuch as with reſpect to deſcent of the kingdom ſhe is alien, ſhe is thus a medium not ſimply or abſolutely, but *ſecundum quid*. And as in the caſe now put properties of different natures may reſt in one perſon, whereby ſome of them will deſcend to the agnates of the poſſeſſor, namely, to relatives on his father's ſide, and others to relatives on his mother's ſide; ſo in the caſe of the king now deceaſed, his kingdom and his other poſſeſſions were not of one and the ſame nature; for his kingdom, which is public property, is incapable of deſcending to women, as has been proved above, and ought therefore to deſcend to the neareſt males of his blood, ſuch as I am, being the king's brother; but his other poſſeſſions, namely, his private ones, the law doth not forbid to deſcend to his daughter. Nor am I now oppoſing her poſſeſſion of theſe; it is the kingdom only which I claim, which deſcends to me by a moſt direct and unbroken ſeries of cauſes from my brother, without any foreign medium, ſince he had no ſon to intervene between me and him, and ſo to continue the chain which binds the kingdom to the Firſt Cauſe, that is, God. Wherefore, by a direct and unbroken chain, my right depends from God; and my niece, the King's Daughter, though by a like chain ſhe poſſeſs his private eſtates, which have alſo deſcended to her from the ſaid Firſt Cauſe through an uninterrupted ſeries of cauſes, cannot be a medium whereby his kingdom can deſcend to the King's Grandſon. So alſo the private property of my brother is not linked or faſtened on to the chain by which the kingdom hangs; nor is his kingdom in any way annexed to the chain upon which that property depends.

CHAP. XXXVIII.

He here confirms by Examples what he proved above by Reaſon.

MOREOVER in the Kingdom of England there is a law of ſuch a kind that, if any one ſhall have been convicted, or, to uſe the words of that law, *attainted*, of felony or treaſon, his blood is forthwith adjudged by that law to be ſo corrupted that, although by the prince's favour he eſcape death, he nevertheleſs will not be capable henceforth of ſucceeding his parents in their inheritances, nor will any of his poſterity ſucceed him in his inheritance. Wherefore, if from that time in the lifetime of ſuch an attainted perſon, or after his death, his father ſhall have died poſſeſſed of a property, however great, the ſon of the man ſo attainted will not, by the law of the land, be capable of ſucceeding his grandfather in his patrimony; but rather it will be confiſcated, or go to the capital lords as an eſcheat, according to a certain diſtinction of law well known in that country in caſes of this kind. Wherefore, as the inheritance of ſuch a grandfather cannot deſcend to his ſon who has been ſo convicted, ſo neither can it deſcend to his grandſon by the ſon ſo convicted, inaſmuch

as there is an intermediate ſtep between the grandfather and the grandſon, namely, that attainted ſon, (though by the law of the land the grandſon ſhall have been himſelf capable of any kind of inheritance), becauſe anything which deſcends cannot leap over or paſs by any ſtep. Wherefore, if the caſe which we are diſcuſſing ſhall have ariſen in that kingdom, we cannot doubt that the kingdom in queſtion cannot deſcend to the grandſon, ſeeing that his mother, through whom as a medium he would obtain it, cannot by any right poſſeſs it. But whether in other countries the law be ſimilar, the preſent writer is ignorant. He remembers, however, how in the Book of Numbers, chap. 27, it is written that the daughters of Zelophehad, who was of the ſeed and Tribe of Joſeph, came to Moſes, ſaying, "Our father died in the wilderneſs, and he was not in the ſedition which was ſtirred up againſt the Lord under Korah, but died in his own ſin, and had no ſons. Give unto us a poſſeſſion among the kinsfolk of our father." And Moſes referred their cauſe to the judgment of the Lord, who ſaid to him, "The daughters of Zelophehad aſk a juſt thing. Give them a poſſeſſion among their father's kinsfolk, and let them ſucceed to his inheritance." By the petition of theſe daughters we are implicitly taught, that if their father had been ſentenced to death in the ſedition aforeſaid, as had been all thoſe who were privy to, and guilty of that conſpiracy, and whoſe heirs were thereby incapacitated for ſucceeding to any inheritance, the daughters of Zelophehad alſo could not have demanded anything by right of inheritance through the medium of their father, although they were deſcended from Joſeph, who was the ſon of Jacob, to whom and to his ſeed, even as to Iſaac and to Abraham, the whole Land of Canaan had been promiſed by the Lord. For, as we read in the 1ſt and 2nd Books of Kings, as often as the Lord judged any of the kings of Iſrael unworthy to reign any longer, and puniſhed them with the extreme of puniſhment, their ſons by no means ſucceeded them in that kingdom. For thus were excluded from the kingdom the ſons of Nadab, who was the ſon of Jeroboam, the ſons of Elah, who was the ſon of Baaſha, the ſons alſo of Zimri, and the ſons of Joram, who was ſon of Ahab, and the ſons of many other kings. Wherefore, inaſmuch as they were excluded from the kingdom of their fathers, becauſe their fathers were judged unworthy of it, *à fortiori* were their ſons precluded from demanding that kingdom by right of their grandfathers and great-grandfathers, the fathers of the kings who were thus aſſociated in puniſhment; wherefore none of theſe ſons ever after that held poſſeſſion of that kingdom. Wherefore alſo the grandſon, who is here a contending party, ſince his mother by judgment of the law of nature is incapacitated for her father's kingdom, and ſo the ſon cannot ſucceed his mother therein, cannot *à fortiori* ſucceed his grandfather through the medium of his mother. So alſo in the Kingdom of France a grandſon by a daughter does not ſucceed his grandfather in domains conferred by the king on heirs male, nor in the Kingdom of England does he ſucceed to lands entailed on heirs male, as has been ſhown above. Wherefore, ſince not only by diſcourſe of reaſon, but alſo by the evidence of the cleareſt examples, thou art inſtructed, O moſt learned of Judges, that the King's

Grandſon, who contends here, cannot ſucceed his grandfather in his kingdom, put him to ſilence by thy ſentence, that he trouble thy court no further, and decide my cauſe, giving me the kingdom of my brother, which from the First Cauſe by the firmeſt chain of uninterrupted cauſes is linked on to me, who in the next degree of ſucceſſion am allied to him, dying as he died without offſpring capable of reigning. And be not, I pray, wearied with my argument prolonged in ſo many words, ſeeing that as I am diſcuſſing the greateſt of earthly cauſes, I cannot unfold its merits in any moderate diſcourſe, for whatever is to be great needs no ſhort time to grow.

HERE FOLLOW THE DUPLICATIONS OF ALL THE CONTENDING PARTIES.

DUPLICATION OF THE KING'S DAUGHTER.

CHAP. XXXIX.

The Judgment paſſed upon our firſt parent proves that ſhe was not ſubject by the Law of Nature.

THEN the King's Daughter, after remaining for a little in ſilent ſuſpenſe for aſtoniſhment at the aſtute replies made to her by her ſon and uncle, at length ſlightly drawing breath, recovered her ſpirit, and addreſſed the Judge as follows: —Thou canſt not fail, diſcreeteſt of Judges, to perceive the meaning and the merits of all that my adverſaries have urged in reply. For thy underſtanding is not like man's; for thou doſt detect at the firſt glance the crafty devices of all who deviate from the truth, and therefore I think it would be raſh in me to trouble thee any further on the ſubject of their replies, ſince there is even a proverb which ſays, "A man may not teach Minerva." Leaving it, therefore, to thy gravity to weigh the merits of their replies, I will endeavour to give a ſatisfactory anſwer to the objections of both my opponents in a ſingle ſtatement. My ſon has brought forward many arguments to ſhow that the woman was ſubject to the man in the time of their innocence, and my uncle revealed to us that it was on account of the woman's fault that ſubjection was impoſed on her by the Divine ſentence paſſed upon her. If, then, as the penalty of tranſgreſſion, the woman was placed under ſubjection, that ſentence ſhows that before ſhe ſinned ſhe was not ſubject. What righteous judge doth not impoſe on a guilty perſon a different puniſhment from that which is due to a juſt one? And if ſubjection be

not a penalty, why is it impoſed on the woman for her ſin? And if it be a penalty, why did the woman, before ſhe fell, ſuſtain it? No reaſon can be given. So, then, by the Divine judgment aforeſaid we are taught moſt clearly that the woman, before ſhe ſinned, was not ſubject to the man, inaſmuch as it was on account of her ſin that the Lord ſo ſubjected her to his authority. And, therefore, by the ſame judgment everything is made void, whereby my ſon or uncle endeavours to prove that the woman was ſubjected to the man by the Law of Nature.

Chap. XL.

Only married Women are by the Divine Sentence ſubject to Men.

MOREOVER, though the aforeſaid ſentence of God ſubjects the woman to the power of the man, the circumſtances of that trial clearly inform us that not every woman, but the married woman only, was by that ſentence ſubjected to the power of the man. For as Adam and Eve were one fleſh, and the man, as the Apoſtle ſays, is the head of the woman, inaſmuch as our firſt parent had preſumed to direct her head, a thing which was not conformable to nature, it is conformable to the equity of juſtice that for the fault of her preſumption ſhe ſhould thenceforth be compelled to lie under the government of her huſband; and this penalty the infection of her crime tranſmitted to all thoſe of her poſterity whoſe ſituation was like her own. Wherefore it ſeems profane to imagine that unmarried women, who have not ſurrendered themſelves to huſbands as their heads, ſhould be involved in the condemnation of that ſentence, as our firſt parent was who had of her own accord ſurrendered herſelf to her huſband. Wherefore, ſince I the king's daughter am not now joined to any man by the bonds of wedlock, and am therefore not involved in the ſcope of the ſaid judgment, that law, impoſed upon Eve and thoſe of her ſex who have followed her example, has not ſurrendered me to the power of any man, and conſequently does not exclude me from ruling the country which I demand. Let my ſon and uncle, if they are ſtrong enough for the taſk, reply to theſe things, which ſhall be the end of my argument; for I do not propoſe to trouble this audience any farther with my complaints in reſpect of this ſuit.

DUPLICATION OF THE GRANDSON.

CHAP. XLI.

The Son here ſhows that his Mother's firſt aſſertion has been completely anſwered by her Uncle.

THE Son then, hearing theſe things, and, as it were, breaking out into ironical words, ſpoke thus: I perceive that my mother has now exhauſted all her weapons, ſo ſlight and ſo frivolous, ſaving her preſence, are the arguments ſhe preſſes in to aid of her cauſe. For there are two things which ſhe conceives, or rather gueſſes, to have reſulted from the judgment before referred to: one, that the woman was firſt ſubjected to the man by force of that judgment: the other, that that judgment bound married women only under obedience to the man. But what can be imagined or thought of more ſilly than theſe two notions, or more diſcordant with the truth? The firſt of the two, before my mother urged it, was made null and void by her uncle in his replication, when he ſhowed by the cleareſt evidence that that judgment iſſued on account of the woman having forſaken the obedience which ſhe owed to the man; whereby we are taught that the woman was not by that ſentence ſubjected to the man, but that, becauſe ſhe, having been ſubject to him before, began to kick againſt his pre-eminence, her former ſubjection was by that ſentence more than ever enforced and aggravated; not, however, that a new ſubjection was impoſed upon her, but that the nature of the old ſubjection was now changed; ſo that that which at the firſt had been free and voluntary, regulated at the woman's own pleaſure, was now made in a manner compulſory upon her and penal, and to be regulated at the pleaſure of the man. Yet that theſe things may ſtand in a clearer light, as alſo the conjectures in which my mother indulged under the ſecond head, I will again conſider, and more clearly handle, for a ſhort time, certain matters which have already been diſcuſſed in this diſputation as well as in the former Treatiſe.

CHAP. XLII.

The ſubjection of the Woman, after ſhe had ſinned, differed from her natural ſubjection in quality, not in ſubſtance.

IN the former Treatiſe it has been ſhown that the man had pre-eminence (*prelatiam*) over the woman and all the creatures of this world from the time of the creation of the firſt man. This pre-eminence is called by St. Thomas (in Prima Summæ, Queſtion xcvi., Article 4) dominion. And of this dominion he alſo, in the third book of

the De Regimine Principum, writes as follows: "If we ſpeak of dominion as it concerns the duty of adviſing and directing, it may be called natural, becauſe it had exiſted in the ſtate of innocence." (And this is the opinion of Auguſtine, in the 19th book of the De Civitate Dei. And therefore that dominion was appropriate to man, in ſo far as man is a ſocial and political animal; for there muſt be order in ſuch a ſociety; and among things which are brought into an orderly relation to each other there muſt always be ſome chief and directing thing, as the Philoſopher teaches in the firſt book of his Politics; and this, indeed, the principle of order ſhows.) A little further on, alſo, he ſays, "Therefore, according to this conſideration, the dominion of man over man is natural, and exiſts among the angels, and exiſted in the firſt ſtate of man." Thus he writes. And in the ſame treatiſe (Book 2nd) he ſpeaks in this way, "We muſt know that in a twofold manner a government political has precedence over a government royal. Firſtly, if we refer dominion to that unblemiſhed condition of human nature which is called the ſtate of innocence, in which regal government did not exiſt, but political, for the reaſon that at that time there was no dominion which involved ſervitude, but one which involved pre-eminence and ſubjection, in diſpoſing and governing the multitude according to the merits of each perſon; that ſo, either by influencing or admitting influence, each man might be diſpoſed according to the congruity of his nature." By theſe words we are taught that in the time of man's innocence there was a pre-eminence, which he calls dominion, importing the duty of adviſing and directing, and that there was alſo ſubjection. But ſince at that time there were not more than one man and one woman, and ſince the woman had not the pre-eminence, we cannot doubt that the man had it. We likewiſe ſhowed above, as did alſo the uncle aforeſaid, not only from ſentences of Holy Writ, but alſo from the cleareſt evidence and the dictates of reaſon, that the woman was always by nature ſubject to the man. And from all theſe things it is evident what kind of ſubjection the woman's was before ſhe ſet it at nought. For as St. Auguſtine ſays, in Book 13th De Civitate Dei, "In Paradiſe, before man ſinned, he had everything which a good will could deſire, and was free from everything offenſive to the ſoul of a happy being." The woman, therefore, deſired the ſubjection to which ſhe was ſubject in Paradiſe when not yet a ſinner; and ſince nothing is ever deſired that doth not give pleaſure, her ſubjection at that time was pleaſing to her. And, indeed, how pleaſing it was to her is clear from what has been ſaid above; for nothing can give greater pleaſure to any one than to know the truth in all doubtful matters by means of another's authority; nor can anything be more deſirable than to be ſafely guided in all matters by the diligence and labour of another, and not to be agitated by any doubts; and the mind of man longs for nothing more ardently than to attain that which it naturally covets. All theſe things were accompliſhed in the woman's caſe, before ſhe ſinned, by her natural ſubjection to the man, as, from what has been ſaid above, may be clear to the careful reader. Let us not, therefore, venture to ſay that this ſubjection was impoſed upon the woman as a puniſhment for her ſin, ſince that which thus knows nothing

of ſorrow cannot be a puniſhment. But aſſuredly the judgment above referred to inflicted a puniſhment upon the woman, ſince it was publiſhed againſt her on account of her ſin; for the ſubjection, in which the woman uſed to take ſo much delight, was by that judgment made grievous to her, ſince it made it compulſory upon all women alike, whether married or unmarried. What can be more irkſome than to be robbed of liberty? or more repugnant than to be deprived of one's own will, and ſubjected to the will of another? It was alſo of neceſſity a torment to the woman to be compelled to tremble under the threats of another, inſtead of enjoying her former delights. For the meaning of the word *dominus* is, as it were, *dans minas*. Wherefore, ſince the man has been appointed the lord of the woman, he is able to threaten her, and therefore to inflict puniſhment on her. All theſe things the ſaid judgment hath worked in the woman's caſe. It was, therefore, no ſmall puniſhment that it inflicted on the woman, ſince it not only took away from her all the delights above enumerated, but alſo ſurrounded her with ſo many inconveniences. And thus it is now evident that the ſubjection of the woman, which had formerly been to her deſirable and joyful, was now by that judgment beſtrewn with moſt bitter circumſtances. For circumſtances, as the Laws ſay, qualify the acts of men. But the ſubjection of the woman is, by force of this judgment, qualified by moſt bitter and troubleſome qualities. This judgment increaſed the man's dignity in power and honour, but tightened the woman's ſubjection by enforcing a more ſtringent obedience than before. It added an additional quality to the woman's ſubjection, but took away nothing from its former ſubſtance; it confirmed the old ſubjection, but did not impoſe upon her one altogether new.

Chap. XLIII.

Not only married, but alſo ſingle Women are ſubjected to Men.

MY mother's ſecond aſſertion is no leſs objectionable than her firſt. For ſhe ſaid that the judgment above referred to had ſubjected to the power of men only ſuch women as were married. But what can be further removed from the dictates of reaſon than this opinion? Have we not ſhown that at the very beginning of the exiſtence of the human race the female ſex was faſhioned in ſubjection to the male? And, therefore, in that the firſt woman had the preſumption to guide her huſband, ſhe tranſgreſſed the rank aſſigned to her condition in the order of the univerſe, and thereby merited the puniſhment decreed by the ſaid judgment. How then could wedlock have been the ſinner, that it ſhould burden its accomplices with a load heavier than others bear? It was not wedlock that ſinned, but the female ſex was the offender; and, therefore, one penalty has now deſervedly involved married and ſingle women alike. For the ſin of the woman broke out of the vicious diſpoſition

of the guilty ſex, and not out of the ſacrament of matrimony. For, even if the firſt woman that ſinned had not been a wife, her ſingle life would not have defended her from the ſin of her preſumption, nor from the puniſhment which ſhe merited for that ſin. And, therefore, the order of matrimony is not polluted by that ſin, although the whole female ſex pay the penalty of it; for puniſhment always follows the offender, and puniſhes not the guiltleſs. Wherefore matrimony, which was guiltleſs of the crime of our firſt parents, remains alſo free from the puniſhment which afflicts them for their crime. God forbid, therefore, that any one ſhould be ſo fooliſh as to think that only married women have by the ſaid judgment, or even by the law of nature, been made ſubject to men, ſince matrimony rather endows women with liberty than humbles them with ſubjection. Every woman, when ſhe marries, is taken as a companion, and never as a handmaid; wherefore Adam calls his wife a companion, when, ſpeaking of his crime, he ſays to the Lord (Gen. iii. 12), "The woman, whom Thou gaveſt me as a companion, ſhe gave me of the tree and I did eat." And hence it happens, that if before betrothal a woman be a man's ſervant, as ſoon as ſhe is married to him ſhe changes her condition, and from being his handmaid becomes his conſort. For marriage makes a woman ſo honourable, that after its contract women always ſhine with the honours of the men whom they marry. Thus Eſther, though a poor and inſignificant woman, became, as ſoon as ſhe was married to king Ahaſuerus, the greateſt queen in the world. And thus every woman becomes, when married to a King, a Queen; when married to a Duke, a Ducheſs; when to an Earl, a Counteſs; and ſo of all other ranks and conditions, ſince the Laws ſay that women ſhine with the rays of their huſbands. For if wives were placed under their huſbands by any other than a ſocial, or, as it is called, a civil ſubjection, the inequality and humility of their condition would, out of a certain ſhame, deter them from the marriage-bed and the embraces of their huſbands; and ſuch a thing would not be at all in accordance with the ſacrament of matrimony. And, therefore, we do not read that even among barbarians a woman, when married to a noble, is afterwards his handmaid. Neither would God the Father have ſurrendered the mother of His own Son to marriage, if ſhe would have thereby become leſs honourable than before. Nor is a woman when free from the bonds of wedlock releaſed from the power of man; for, though ſhe no longer remain under her father's authority, ſhe will not eſcape from obedience to him who bears ſupreme rule over the country in which ſhe dwells. And, therefore, it is not permitted to think that only married women are ſubject to men.

Chap. XLIV.

He here ſhows that the Divine Sentence is repugnant to his Mother's opinion.

MOREOVER the Divine ſentence paſſed upon the woman was two-fold and two-edged, becauſe it not only coerced her by the above-mentioned ſubjection, but delivered her up to ſorrows manifold in the pains of childbirth. And this penalty falls with equal weight on all women, making no diſtinction between the married and the ſingle. We ſee, therefore, no juſt reaſon why the ſecond part of the ſame ſentence ſhould not, like the firſt part, be extended to all women without exception, ſince the ſecond part was neither conditioned nor modified, but, like the firſt, was put forth abſolutely in the plaineſt words. And ſince the ſame cauſe made married and ſingle women equal in crime, it is not probable that ſo great a Judge, who is an arbiter of perfect equity, would have adjudged them unequal in puniſhment, or on account of that ſin would have tormented the offspring, that had ſinned only in the perſon of its parent, the more ſharply if it were honoured by the ſacrament of matrimony. For the ſentence of that Judge committed no ſuch vagaries in the caſe of Adam, who was a partner in the ſin, whoſe ſons, whether married or not, God made impartially ſubject to the ſame penalty of labour and ſweat. Nor, indeed, in the caſe of the ſerpent's brood, which wages irreconcilable war with all the ſeed of the woman, has the ſaid ſentence exhibited any ſuch diverſity of operation. Wherefore it is no leſs unwiſe than ſhameful to ſay, or at any rate to think, that ſo great a diſcrepancy, or, more truly, inconſiſtency, ſhould have exiſted in the decree of ſo great a Judge. Moreover, in what ſenſe the Divine ſentence conſtituted the man lord over the woman, what kind of lordſhip he hath, and in what way it differs from the dominion which St. Thomas ſays that man had in the time of innocence, it now behoves us to examine.

Chap. XLV.

In what way the Dominion, which on account of ſin was given to Man, differs from the Dominion which he had in the time of innocence.

FOR, as has been ſaid above, a *dominus* is ſo named according to etymology, *quaſi dans minas*, (as one who uſes threats). For threats are a conditional ſentence of future puniſhment; ſo that if the man who is threatened do not perform what is enjoined him to do, he ſhall undergo the puniſhment decreed for him. There is therefore no ſubjection to a maſter without the power of puniſhment; ſince the man ſubjected to a maſter muſt of neceſſity fear and even tremble when he offends. And of this kind of dominion

St. Auguſtine, in the De Civitate Dei (xix. 15), ſpeaks thus: "Man was made after the image of God that he might be lord over the irrational creatures, but not over the rational, becauſe that man ſhould be lord over man, is the conſequence of ſin." And yet if the kind of dominion which now exiſts was the conſequence of ſin, why doth St. Thomas ſay that there is a kind of natural dominion which exiſted before the fall of man? Aſſuredly the word dominion in its full extent and proper ſignification imports dignity and the power of puniſhing, and therefore of threatening; and ſuch a dominion man had not over man before his fall from a ſtate of innocence; (this is the dominion whereof St. Auguſtine ſpeaks in the place aforeſaid); becauſe a dominion of this kind was firſt granted on account of ſin, that is to ſay, granted to the man over the woman on account of her ſin. But the dominion of which St. Thomas ſpeaks, although it imported dignity, had nevertheleſs no power of puniſhing a contumacious ſubject, nor of threatening him in any way, and therefore ſuch a dignity deſerves not to be called dominion in the proper and full extent of the word. Nevertheleſs after a certain manner of ſpeaking a dignity of this kind was a dominion, becauſe the man who poſſeſſed it was ſet over the woman in honour and in the office of directing her; as the holder of a public office is ſet not over the ſlave but the freeman, directing him according as his intereſts as a free man, and the common good require. This is the kind of dominion of which St. Thomas ſpeaks in the xcvi[th] Queſtion aforeſaid. For the ſons of kings and princes are called *domini*, although they are illuſtrious only by reaſon of their dignities, and have no power of juriſdiction; and ſo queens are called *dominæ*, although they have no power of puniſhing the inhabitants of the kingdom. By the ſame manner of ſpeaking alſo does the Philoſopher in his Politics call thoſe who excel in wiſdom *dominos*, ſaying that as the man who excels in ſtrength of body, but is wanting in underſtanding, is by nature a ſlave, ſo the man who is vigorous in underſtanding and active in mind is by nature a lord. Yet we know that the wiſe are not always lords, nor the deficient in underſtanding always ſlaves by nature, becauſe St. Auguſtine in the ſaid book ſpeaks of ſlaves in this way: "We nowhere in Scripture read the word 'ſlave' before righteous Noah by that word pronounced puniſhment upon the ſin of his ſon." But the origin of the word *ſervus* (ſlave) is ſaid to be *à ſervando*, becauſe they who by the laws of war might have been put to death, when their lives were preſerved to them, were called ſlaves. And therefore the Philoſopher did not with ſtrict propriety call the deficient in underſtanding ſlaves, nor thoſe who excel in wiſdom lords, but only after a certain manner of ſpeaking; juſt as St. Thomas employs the word lord, becauſe thoſe who direct and adviſe their ſubjects are in a certain ſenſe lords, namely, in dignity and office, as are the dominations in the order of Angels, who only direct their inferiors by moral influence. For this reaſon St. Thomas called ſuch an office a dominion, as is evident in the ſaid Queſtion, and likewiſe in the ſaid ſecond book of his De Regimine Principum, where he ſays that dominion was before the fall of man political, and did not involve ſervitude, but only pre-eminence and ſubjection. And therefore that dominion was

the pre-eminence, or prelacy, ſpoken of in the former Treatiſe, which the Lord gave to man when He formed him, and deſired him to have dominion (*præ-eſſe*) over all the creatures of this world, a pre-eminence which was at that time entirely devoid of any right to puniſh or threaten. But now and for ever there remains a pre-eminence over woman qualified very differently than before, ſince that which now exiſts confers the power of threatening and, if needs be, of puniſhing, on which account it hath properly acquired the name of dominion, or lordſhip, over her.

CHAP. XLVI.

Woman is ſubject to the Man, provided ſhe obey him in reſpect of any kind of Dominion.

AFTER the dominion which was conferred by the Lord on the man to be exerciſed over the woman, there was eſtabliſhed by man another kind of dominion, by virtue of which one human being rules over another of either ſex, a dominion which is called political, not that dominion which before the ſin of man knew nothing of puniſhment, but another kind of dominion which inflicts puniſhment on every offending ſubject. This dominion firſt crept in during the time of the wicked Cain in the city of Enoch, which he had built; and on this account is called not only political but alſo civil dominion. Afterwards after the deluge, when the giant Nimrod had uſurped power over men, and wars in conſequence entered in among them, deſpotic dominion aroſe, whereby the conqueror reduced the conquered to ſlavery. And afterwards in the time of Ninus, ſon of Belus, who, as St. Auguſtine ſays, was the firſt man that was diſtinguiſhed by the name of King, a third kind of dominion broke out, which is called royal. And a long time afterwards, namely, in the time of Julius Cæſar, there grew up the greateſt dominion of all, that of the Romans, which from that time was called imperial, and which St. Thomas in the aforeſaid treatiſe of his, De Regimine Principum, aſſerts to have been both political and royal. Other forms of government (*dominia*) alſo, called by different other names, as thoſe which the Philoſopher calls an ariſtocracy, an oligarchy, and a democracy, as well as many others, have originated from human inſtitutions at different times and places; all which have, without regard to ſex or rank, ſubjected to their authority women as well as men, married as well as ſingle women. And therefore women have been ſubjected not only to their own huſbands, as Eve was to Adam, but alſo to other men in whoſe juriſdictions and territories they dwell. Not that married women could on that account eſcape the dominion of their huſbands; but to diſtinguiſh between the other kinds of dominion, which grew to be ſo numerous, and the dominion exerciſed by the huſband over his wife, the ancients called this latter an economical, ſocial, or civil dominion. For an *œconomicus* is a diſpenſer as well of money as of corn and all other poſſeſſions; (thus the huſband diſpenſes all things which the married couple poſſeſs); and *civile*

is derived from *civitas*, not that which is ſurrounded by walls, but that which St. Auguſtine in the firſt book of his De Civitate Dei defines thus: "A *civitas* (a ſtate, commonwealth) is a multitude of men united by ſome bond of ſociety, from which kind of ſtate the city in its material ſenſe derived the origin of its name." In like manner is it with civil dominion; whence a civil dominion is ſo called as being a ſocial dominion, ſuch as every man poſſeſſes over his wife, who, as is ſaid above, is joined to him as a companion (*ſocia*), and not as a handmaid. For from the ſide of the firſt man was his wife formed that ſhe might live by his ſide, and be a companion unto him. Under this dominion is every wife ſubjected to her huſband, though ſhe and he be ſubjected to other men under other kinds of government. But a ſingle woman cannot be ſubject to this economical dominion; and yet ſhe cannot be free from all dominion, ſince every woman has been commanded to live under man's power, and man has been appointed her lord; for all that the Lord pronounced judicially to our firſt mother, He pronounced not only to her but to the whole female ſex; and therefore no woman can eſcape the penalty impoſed upon Eve, even as no man can elude the penalty decreed againſt Adam. Wherefore every woman is judged to be, like Eve, under man's authority, inaſmuch as Eve is held to have been ſo ſubjected. Nevertheleſs any and every woman is not commanded to live under the power of every man, nor was any woman after Eve committed abſolutely by the Divine judgment to the power of any and every man. For the Lord had ſaid to every woman, "Thou ſhalt be under man's power;" and He ſaid not, "Thou ſhalt be under the power of every man," nor "under the power of thy huſband," whereby He would have ſubjected married women only; but He ſays indefinitely, "Thou ſhalt be under man's power." Wherefore, if ſhe ſhall be under the power of any man whatſoever, ſhe doth not eſcape the effect of that judgment; for an indefinite propoſition is true, if it be true in a ſingle ſubject. So likewiſe the woman is not by the Divine judgment ſubjected to any one given ſpecies of authority; and therefore, if ſhe be ſubjected to a man who rules with an economical, political, regal, or any other kind of government, ſhe lives under man's power, and is ſubject to his dominion. God forbid therefore that we ſhould think that any woman, though ſhe have not reached the age of puberty, and therefore not eſcaped from the fear of paternal authority, and be not fitted for nuptial union with man, is ſet free from man's dominion; ſince all women, married and ſingle alike, are abſolutely and preciſely embraced in that penal ſentence paſſed by the Lord upon Eve, "Thou ſhalt be under the power of the man, and he ſhall rule over thee." Yet not all things which Holy Scripture ſpeaks concerning the woman's obedience to the man are to be referred to the whole female ſex; for many of its ſayings concern only the obedience which a wife owes to her huſband, as for inſtance that in 1 Pet. chap. iii., "Ye wives be in ſubjection to your own huſbands;" and that ſtatement in the ſame chapter, "For after this manner in the old time the holy women adorned themſelves, being in ſubjection unto their own huſbands; even as Sarah obeyed Abraham, calling him lord, of whom be ye the daughters, doing that which is good."

Theſe things moreover are clearly diſtinguiſhed in the xxxiii^d. Canon, Queſtion 5, *Hæc imago*, where it ſays at the end: "Hence it is ſufficiently evident how the law would have women ſubject to men, and that wives ſhould be almoſt their ſervants." Lo! how that Canon ſpeaking of all women ſays that they are ſubject to men, but that only wives ſhould be ſubject almoſt as ſervants. And now, O moſt righteous of Judges, I ought not, I think, any longer to call upon thy ſagacity in regard to the objections of my mother; the time alſo warns me to turn myſelf to the replications of her uncle. To theſe, therefore, I will now endeavour to reply, as I am able; and would that I might find in them no greater difficulties than I have found in my mother's objections.

HERE FOLLOWS THE GRANDSON'S DUPLICATION TO THE ALLEGATIONS OF THE KING'S BROTHER.

CHAP. XLVII.

In the firſt place the Grandſon repudiates the laws of foreign Kings.

MY mother's uncle and my grand-uncle, although he argued in a prolix and ſhrewd diſcourſe, appeared to prove two things only which could be a bar to my title of ſucceſſion. One was this; he aſſerted that every inheritance which can come down to any one by title of deſcent, muſt deſcend to him by degrees and continuouſly, and that it cannot paſs by or ſkip over any ſtep of deſcent; which things he endeavoured, in no ſhort diſcourſe, to prove by reaſons ſpringing from the courſe of nature. And the ſecond thing which he alleged was this: In the Kingdom of France, he ſays, and likewiſe in the Kingdom of England, if any eſtate be given to a man to hold to himſelf and to the male heirs of his body, that eſtate is by the laws of thoſe kingdoms prohibited from deſcending to a grandſon born of a daughter of the donee. But what can this laſt argument contribute to our controverſy, ſince it is concerning the deciſion of the Law of Nature that we are contending, and ſince that law alone avails to ſet our ſuit at reſt? But the laws of France and England do not overleap the boundaries of thoſe countries, and therefore they cannot aid us who are contending for a kingdom which acknowledges no ſuperior, and which is therefore no more ſubject to foreign laws than it is to foreign power. For me, therefore, to contend with many words againſt this laſt point would not be ſet down to wiſdom, but might rather be called impertinence. Wherefore the whole force of my great-uncle's argument demands a reply to his firſt aſſertion only; and this, therefore, omitting all the reſt, I thus proceed to demoliſh.

Chap. XLVIII.

The Grandſon here introduces the Civil Law againſt the replications of his Great-uncle.

THE Civil Law commits the guardianſhip of children to the neareſt relatives they have of their own blood, whether thoſe relatives be agnates or cognates. Nevertheleſs the Civil Law does not grant the guardianſhip to a woman, except ſhe be the mother or grandmother of the infant. Yet, if the ſon of a paternal or maternal aunt of the ward be the neareſt male relative of his blood, and not ſubject to any legal defect which would exclude him from the office of guardian, it then commits to that ſon the guardianſhip of the ward in the lifetime of his paternal or maternal aunt, on account of the nearneſs of blood whereby the ſon is related to the infant, and notwithſtanding that the ſon contracts that nearneſs from his ſurviving mother; as is more manifeſtly declared in the title De legitima Tutela, &c. Collation ix, where, among other matters, it is written: "For we decree that every man, according to the degree and order of relationſhip whereby he is called to the inheritance, either alone or in conjunction with others, undertake the duties of guardianſhip, and that herein no difference be introduced concerning the right of agnates or cognates, but all alike are to be called to the guardianſhip, who being related to the minor, deſcend by the male or female line;" and a little after it ſays, "We alſo prohibit women from undertaking the duties of guardianſhip, unleſs they be the mother or grandmother." Wherefore, ſeeing that the ſon of the ward's paternal or maternal aunt muſt, on behalf of his mother, who cannot take it upon her, be admitted to the guardianſhip even in his mother's lifetime, the aforeſaid Civil Law affords no reaſon why the deceaſed king's grandſon by his daughter ſhould not, on account of the nearneſs in which he is related to his grandfather through his mother, be capable, even in his mother's lifetime, of poſſeſſing his grandfather's kingdom, which his mother cannot hold. Thus, although we are far from holding that the Emperor hath any authority to enact a law which ſhould decide our cauſe, yet the law framed by him proves in our caſe what deciſion ought to be given, inaſmuch as the Civil Law doth not decide nor affirm anything againſt the equity of the Law of Nature.

DUPLICATION OF THE KING'S BROTHER.

CHAP. XLIX.

And first he proves that Laws all and singular are seasonable in this controversy.

THEN the King's Brother smiled within himself a little, and spoke thus: The King's Grandson makes little of the laws of the most powerful kings of the world, for the reason that the kingdom for which we are contending doth not lie under the authority of those kings; yet the laws of the Emperor, who also has no authority over that kingdom, he now tells us ought to be admitted in this controversy. What can be farther than this from the judgment of reason? For where the case is the same, there, as the Laws say, the judgment ought to be the same. And inasmuch as the grandson quotes the laws of Cæsar, who can have no jurisdiction in this case, he leaves himself no just grounds why he should reject the laws of the kings referred to; nay, he tacitly concedes the very thing which he at first openly and expressly denied. And if, as he asserts, the Civil Law doth not forsake the precepts of the law of nature, it would seem both rash and unjust to think otherwise of the laws of such great kings. And therefore that the laws of these kings will, like the Civil Law, be useful in this discussion, is not only proved by his own speech, but is pointed out by the dictates of reason; not because the authority of the laws of such legislators contributes anything to the trial of this cause, but because the same reason which urged them so to frame those laws, may likewise urge others also to come to a like judgment. For *jus* is derived from *justicia*, as St. Augustine says: "Where there is no true justice, there can be no true law (*jus*), because that which is done *jure*, is also done justly." (De Civ. Dei, lib. xix.) I therefore admit the laws of all kingdoms as being in a manner opportune in this case, in so far as they reveal the truth of justice, which is the law of nature, as has been decided in the former Part of the Treatise. In this dispute, therefore, we by no means reject the decisions of the Civil Law, nor yet those of the said kings, although this suit cannot be settled by their authority, but only by the authority of the law of nature. And therefore I refuse not the sentence even of that Civil Law which the king's grandson now brings forward; because I doubt not that it issued from the territory of nature's law. For what could be more agreeable to the design of the law of nature than to entrust a tender orphan, deprived of both parents, who cannot guide himself, to the guidance of an upright man the nearest to him of his blood? Who could more tenderly and carefully cherish such a one than his nearest blood-relation? A man, too, is better adapted than a woman to instruct such a one in manners and virtue, and also to manage his patrimony, and to give an account of

his revenues to the young man when he ſhall have come of age and be grown up. But a woman needs, like a ward, the care of a man even in her own proper purſuits; and therefore not only by nature, but by the Divine law, ſhe is placed under the government of man. I therefore embrace with my underſtanding and commend the aforeſaid law of Collation IX. And ſo it now only remains for me to ſhow why this law, which is aſſerted to be repugnant to my replies, can neither contradict them nor ſtand in their way; and this I proceed to do as follows.

CHAP. L.

He here ſhows how unlike is the Caſe juſt laid down to the Caſe in diſpute.

THE Civil Law referred to enacts nothing which is directly oppoſed to my replies, and therefore if it be conſidered to have any bearing againſt them, it muſt be acknowledged to have it indirectly, and by force of analogy. Let us, therefore, firſt inquire to what extent the enactments of this law are like the things which I have ſketched above. This law gives to the ſon the guardianſhip which it denies to his mother. I have denied to the ſon the kingdom which the law of nature denies to the mother. This law ſummons the woman's ſon to an onerous duty. I reject the woman's ſon from a duty, not only onerous, but honourable. That law decides who ſhall diſcharge a certain private duty. I argued concerning a duty not private, but public. That law ſelects a fit and proper perſon for the ſervice of another. I have conferred on a man, without regarding his merits or demerits, not another man's, but his own inheritance, not by title of election, but by that of deſcent. That law chooſes a man ripe in years, endowed with forethought and good ſenſe. I admit young men, nor do I reject thoſe who, by defect of nature, are deficient in mind. That law appoints men to adminiſter, I to rule. That appoints them to look after another man's intereſt, I to look after their own. Why need I ſay more? To a dignity, which nature refuſes to women, I admit not their ſons any more than themſelves; but that law admits to an humble duty, from the performance of which nature rejects not the woman, the ſons of certain women, and does not diſqualify all women. Wherefore, ſince, as the Laws ſay, we meaſure the law by the facts, ſimilar laws, or one ſyſtem of law, cannot rule facts ſo diſſimilar and of ſuch different value. Public and private duty, as has been ſhown above, are not governed by the ſame law, nor do an inheritance and the conferring of an office fall under the ſame principle of law, ſince right of deſcent confers the one on the heir, human reaſon diſpoſes of the other according to merit, as the Civil Law does now, ſo that guardianſhip is often called in the Laws an office. But all the individual caſes, which are to be governed by one law, ought to fall under the ſame principle of juriſprudence. Thus a public crime and a perſonal wrong are not governed by the ſame law, nor is the deſcent of land governed in the ſame way as a contract. The kingdom which we ſeek is real property, capable of deſcending to

the heir of the preceding king. But to govern a child and to manage his patrimony is a perſonal charge; and therefore the law, which takes cogniſance of the choice of ſuch a governor, is ignorant of the right of hereditary deſcent. So the law which puniſhes criminal offences knows no mitigation of ſeverity in the caſe of perſonal or private wrongs; and, therefore, there are as many different kinds of law as the merits of the acts are different. Thus, the judge, in the caſe of crimes, extorts the truth by torture; in perſonal caſes he learns the truth by the depoſition of a third party. Thus real property deſcends to agnates and cognates, but moveable property is ſeized and diſpoſed of not by them, but by legatees or executors. Wherefore, ſince the caſe of the Civil Law and the caſe we are diſcuſſing are ſo unequal in merit and diſſimilar in facts, and therefore do not fall under one and the ſame principle of juriſprudence, neither one law nor a like law can rule both caſes. That enactment of the Civil Law then doth not run counter to my replies, either directly or indirectly and by way of analogy, nor doth it derogate from anything which I have urged.

Chap. LI.

A law promulgated by man doth not prove that the Law of Nature points the ſame way.

MOREOVER all the laws of the world do not contain the ſame enactments concerning the adminiſtration of guardianſhip as the Civil Law. For in the Kingdom of England, if an inheritance, which is held under the kind of tenure called in that country ſoccage, deſcend to one who has not arrived at the age of puberty from any of his agnates, neither the inheritance nor the child ſhall be under the cuſtody of any of his agnates; but both himſelf and his inheritance ſhall be under the control of his cognates. And if the inheritance of the heir ſhall have deſcended from the ſide of his cognates, then the ward and his inheritance ſhall be in the cuſtody of his neareſt agnate and not his cognate, until he ſhall have come of age. For thoſe laws ſay that to commit the guardianſhip of an infant to him who will next ſucceed him in the inheritance, is like committing the lamb to the wolf to be devoured. But if the inheritance is held not in ſoccage, but by military ſervice, then by the laws of that land the infant himſelf and his inheritance ſhall be in the cuſtody neither of agnates nor cognates, but of the lord of the fief. Wherefore as in that kingdom the laws differ from the Civil Law on the cuſtody of wards, it is alſo as probable that the ſame difference exiſts in the laws of other countries, eſpecially of thoſe countries which do not obey the Emperor; and hence it is plain that the management of guardianſhip is not regulated after one pattern in all places, and that all kingdoms are not ruled by the Civil Law. And therefore we may conſider that enactment to have emanated from the authority of the Emperor alone, and not to be abſolutely a decree of the law of nature, which is uniform in all countries. And this the words of the law itſelf ſhow to any one who carefully conſiders them. For in old times legiſlators, when the courſe of the Law

of Nature did not pleaſe them or the people, often publiſhed ſuch other laws as they deſired. And in this way alſo cuſtomary laws were introduced, as is evident in Canon j^a. Di. C^a. *Omnes leges.* And therefore all laws decreed by man, though they be not directly oppoſed to the law of nature, from which they ſtart and in which they muſt of neceſſity ſhare, do, nevertheleſs, undoubtedly within certain limits differ from that law; for they would not be other laws, but the ſame law, if they did not in ſome reſpects differ therefrom. Therefore, the ſaid enactment of the Civil Law, which is accounted a conſtitution of man, ſhows by reaſon of its framing that its own decree, in the caſe which it decides, is one, and that before its promulgation the decree of the law of nature was another, and thus it decides that in the matter of the guardianſhip of a ward the law of nature judges not as it doth itſelf, but differently. How can, therefore, that enactment, which differs ſo much from the law of nature, though it give the office of guardian to the ſon in his mother's lifetime, on account of the mother's near relationſhip by blood, prove that the law of nature will aſſign a kingdom in the ſame manner—the law from whoſe ſentence, even in the management of guardianſhip the Civil Law, by its deciſion, proclaims itſelf to differ? Therefore, not only does that law not prove that which the king's grandſon endeavours to infer by its means; but it muſt be held rather to prove the oppoſite. But leſt, by labouring in theſe ſhadowy and imaginary regions, we be ſlanderouſly ſaid to loſe our road and go aſtray, like men on a foggy day, let us ſearch for ſomething clear and ſolid, and free from every cloud of doubt, if any ſuch thing can be found in the Civil Law, which may diſcloſe the naked and ſhining truth of the grandſon's title.

Chap. LII.

The Civil Law prohibits the Grandſon by a daughter from ſucceeding to his Grandfather in honour and dignity.

IN the volumes of the ſaid Civil Law it is abundantly found that ſtation, dignity, and rank deſcend to the heirs from agnates and not cognates; to which relate l. j. C^o. De Dignitatibus, and the ordinary Gloſs on the ſame, and l. *Cum legitimæ* ff. De Statu Hominum, with the Gloſs on the ſame. And who are agnates and who cognates is taught in the Inſtitutes, De legittima Agnatorum Tutela §. j., where it is thus written: "Agnates are thoſe who are related to each other through males; that is, as related through the father, as a brother by the ſame father, or the ſon of a brother, or the ſon of ſuch a ſon. But thoſe who are related through females are not agnates, but merely cognates by their natural relationſhip." All this teaches us moſt clearly that by the Civil Law ſtation, dignity, or rank never deſcend from a mother to her ſon, nor from his maternal anceſtors, ſince they are cognates and not agnates, and therefore not from a grandfather to a grandſon by a daughter. And this is expreſsly declared by the text in l. *Liberos* ff. De Senatoribus, where

among other things it is thus written : " We ought to account as children of ſenators not only the ſons of a ſenator, but alſo all ſons born of themſelves or of their male children, whether they be natural or adopted. But if a man be born of the daughter of a ſenator, we ought to regard the condition of his father." To this refers the text in l. *Exemplo alias Exemplum* C. De Decurionibus, together with many others. What, then, could more plainly ſet forth the merits of the ſaid grandſon's title to the kingdom of his grandfather than the Civil Laws do in theſe paſſages, which ſo manifeſtly declare that a grandſon by a daughter cannot ſucceed his grandfather in ſtation, dignity, and rank? For, ſince the regal elevation, ſtation, dignity, and rank are the loftieſt of all temporal ſtations, dignities, and ranks, inaſmuch as ſuch a grandſon is incapable of ſucceeding to the ſtation, dignity, and rank of his grandfather, the neceſſary concluſion from the ſaid Civil Laws is, that he is incapable of ſucceeding to his grandfather's kingdom. Ceaſe, therefore, O grandſon of the king, any farther to contend under colour of ſuch a title as this. You have invoked the aid of the Civil Laws,—they now decide againſt you,—even as we ſhowed above that the Law of Nature decided againſt you.

Chap. LIII.

The Civil Law doth not allow women to reign, for reaſons here aſſigned.

BUT leſt your mother ſhould, like you, truſt for ſupport to the aid of the Civil Law, I will endeavour to bring forward, ſo far as I at preſent remember, what that law decrees concerning her title, as well as concerning yours. I recollect that it is written, (ff. de Judiciis l. *Cum prætor*,) that no woman can be a judge, nor can diſcharge the office of judge, but ought to be entirely excluded from the whole body of judges. The ſame rule is laid down in C. De Arbitris (l. fin.,) and alſo that ſhe cannot hold the office of magiſtrate. So alſo in ff. De Regulis Juris l. *Feminæ*, where theſe words occur : " Women are excluded from all civil and public offices, and therefore they can neither be judges nor hold the office of magiſtrate." Moreover, women cannot ſucceed their parents in an *honour* which is concerned with the adminiſtration of the ſtate, (ff. De Muneribus et Honoribus l. *Et qui originem.*) And what an honour is we are informed in the ſame Title, (l. *Honor*), namely, that an *honour* is the adminiſtration of affairs of ſtate accompanied with perſonal rank and dignity. Honour is alſo defined in the ſame way by the ordinary Gloſs, (C. De Honoribus et Muneribus non continuandis li. x. l. j.) And although women can ſucceed their parents in the honour of reverence and reſpect, of which the Apoſtle ſpoke when he ſaid, " In honour preferring one another," and alſo St. Peter when he ſaid, " Honour all men" (1 Peter, chap. ii.); which kind of honour all daughters of noblemen enjoy until they marry commoners, (See ff. De Senatoribus l. *Feminæ*), and which honour married women alſo obtain in right of

their huſbands, (See C. li. x. l. fin., where the text ſpeaks thus: "We elevate women by the rank of their huſbands, and ennoble them by the huſband's family, and fix their legal ſtatus (*forum*) according to the huſband's perſon, and change their domicile: but if they afterwards marry a man of lower rank, let them be deprived of their former dignity, and follow the condition and domicile of their laſt huſband,"—for "wives ſhine with the rays of their huſbands," as the words of the text have it in Authen. De Conſulibus *Si vero* Collat. iiij.)—yet, in *honours* which involve the adminiſtration of ſtate affairs, accompanied with perſonal rank and dignity, women, according to the Civil Law, never ſucceed their parents; for the female ſex has not the legal capacity for ſuch an honour. (See C. De Mulieribus *In quo loco*, &c., and there expreſsly in the Gloſs on the word *honores*, and C. De Nuptiis l. *Imperiales*, in the Gloſs on the word *dignitatem*.) And that ſometimes an *honour* is given accompanied with adminiſtration of ſtate affairs and ſometimes without it, is ſtated in the text C. Ut Dignitatum Ordo ſervetur l. ij. But every king is not only a judge, but a magiſtrate, and is reſplendent in *honour* together with dignity and the adminiſtration of the ſtate. For that he is a judge is evident, inaſmuch as he has the pure and mixed authority (*imperium merum et mixtum*), and alſo juriſdiction, and to hold theſe is the office of a judge, (See ff. De Juriſdictione omnium Judicum l. j., together with the Gloſs on the ſame paſſage). For he holds the *merum imperium* who has the power of the ſword for the puniſhing of evil doers; and he holds the *mixtum imperium* who has the power of putting men into poſſeſſion of their goods when equity requires it. The king poſſeſſes alſo juriſdiction, for he can appoint other judges under him. And that theſe are the duties of the *merum* and *mixtum imperium*, and of juriſdiction, is the expreſs text, ff. De Juriſdictione omnium Judicum l. *Imperium*. The Emperor alſo, whom formerly the whole world obeyed, at that time, as at preſent, diſcharged the office of judge, (See ff. De Conſtitutionibus Principum l. j. and C. eod. Tit. l. fin.) And indeed that every king is a magiſtrate, and holds the moſt illuſtrious *honour*, together with the adminiſtration of the ſtate, it needs not to teach by adducing laws, ſince the facts are notorious, and almoſt all law books are full of them. Yet as we have already declared what it is to diſcharge a high office or honour, it is alſo ſuitable that we ſhould explain what is meant by holding the office of magiſtrate. But on this ſubject in ff. De Accuſationibus l. *Qui accuſare*, and eſpecially in the Gloſs, are theſe words: "He to whom is committed above others the care or adminiſtration of the ſtate, holds the office of magiſtrate." Wherefore, that a king, to whom above all others ſuch cares and ſuch adminiſtration belong, holds the office of magiſtrate, this deſcription ſuffers no man to doubt. Wherefore, ſince every king is a judge, and diſcharges alſo the office of magiſtrate together with the management of the ſtate, as the Civil Law teaches us, and ſince a woman cannot be a judge, nor diſcharge the office of magiſtrate or any ſuch office, as the ſaid law alſo teaches us, it neceſſarily follows from the ſame laws that a woman cannot be king nor diſcharge the office of king, and therefore cannot poſſeſs a kingdom. Wherefore, although we ſhowed that by the rules of the law

of nature women are debarred only from the ſummit of ſupreme authority, we now find, after having explored the decrees of the Civil Law, that they cannot reign even in ſubject kingdoms: and thus the Civil Law rejects women from the office of reigning much more ſeverely and ſtringently than we proved them to have been rejected by the decree of the Law of Nature.

Chap. LIV.

The Civil Law does not ſolve the queſtion propoſed, but renders its ſolution clearer.

AND though it was laid down in the former Treatiſe that this cauſe can be decided by no other human law than the Law of Nature; yet even we acknowledged beforehand that other laws may furniſh aſſiſtance for its diſcuſſion, and that this is true we now actually experience, in that the inveſtigations of reaſon, by which we penetrated to that truth which is the law of nature, have proved that the Civil Law, which we have now brought forward, is firm and impregnable in its decrees. For againſt the dictates of the law of nature the Civil Law has never decreed anything; although it has at times decreed in a different way, or in another manner, as indeed do almoſt all the laws promulgated by man. And hence, (ff. De Juſticia et Jure), it is thus written: "Civil Law is that which neither altogether departs from natural law or the law of nations, nor in all matters obſerves it." Accordingly, when we add anything to, or ſubtract anything from, the common law, we make it a *jus proprium*, that is, civil law.

Here obſerve what is Civil Law, and whence it derives its name and origin.

Chap. LV.

As the Civil ſo alſo does the Canon Law reject women from the office of reigning.

BUT it is expedient for us alſo to inquire whether the Canon Law, which governs the ſpouſe of Chriſt, that is, the Church, and therefore is held to govern all the Faithful, pronounces concerning government by women in the ſame way as the Civil Law. Now in the Canons (xxxiii. Queſtion 5) it is thus written: "It is certain that the woman has been ſubjected to the dominion of the man, and that ſhe has not authority, nor can ſhe teach, nor be a witneſs, nor pledge her word, nor be a judge." Wherefore, ſince women—becauſe unable to be judges, or to hold the office of magiſtrate, or diſcharge any honour connected with the adminiſtration of the affairs of ſtate—are rejected from the office of king by the Civil Law, and ſince the Canon Law permits them neither to be judges, nor to have authority, nor to teach, it follows that the Canons reject women from the regal eminence for the ſame reaſon as that for which the Civil Law rejects them. Nevertheleſs, that theſe things may be more clearly and openly evident, let us bring forward what the Apoſtle ſays on the ſame ſubject.

CHAP. LVI.

The Apoſtle approves of the things which had been previouſly ſanctioned by the Law of Nature.

IN 1 Cor. chap. xi. it is thus written, "The head of every man is Chriſt; but the head of the woman is the man; and the head of Chriſt is God." Who could prove more forcibly that a woman is incapable of ſupreme rule, or more clearly ratify the form of our argument, conſtructed for the moſt part of ſimilitudes, or expreſs more openly the rank of all rational creatures endowed with bodies, than the holy Apoſtle does in this paſſage, who teaches us, by this moſt eaſily underſtood eulogy, how the woman is ſubordinate to the man, the man to Chriſt, and Chriſt, in his human perſon, to God the Father? The head, ſays the Apoſtle, of the woman is the man, and the head of the man is Chriſt, and the Head of Chriſt is God the Father. Chriſt owed obedience to God the Father, to whom He was made obedient even unto death. The man owes obedience to Chriſt, and the woman to the man, even as a man's whole body owes obedience to the head. For what is the meaning of this metaphor, that the man is the head of the woman, except that as a man's head is ſet over his body, ſo the man is ſet over the woman? By means of the head we ſee, we hear, we ſmell, and we taſte, and from it, as the Philoſopher ſays, is derived all feeling and motion, ſo that, except under its guidance, the body can do nothing which is convenient or pleaſant to itſelf; and therefore each individual limb obeys the head, and moves without heſitation at its nod. So alſo, by means of the man, the woman ſees things celeſtial and terreſtrial, ſhe hears whatſoever is to be learnt, ſhe ſmells whatſoever is delectable, and ſhe taſtes all things which it is expedient ſhe ſhould enjoy for the ſuſtenance of her bodily ſtate; and thus without regard to the man's guidance the woman could accompliſh nothing, any more than the body without the head; and, therefore, as the Apoſtle ſays in the ſame place, the woman veils her head, by which act ſhe ſhows that ſhe has a loftier and nobler head to guide her than her bodily head; and therefore ſhe is aſhamed to ſhow her own woman's head, leſt ſhe be thought to deſire to guide herſelf by its means. For our firſt parents covered their *pudenda*, leſt by their impulſe, and not by the guidance of reaſon, they might ſeem to be provoked to the connubial action. The laws of England called a married woman not "married," but "covered" to her huſband (*femme couverte*). Modeſty leads a woman to cover her head, I know not from what impulſe, except it be that nature prompts her to ſignify the obedience which ſhe owes to the man by means of this ſign, as a ſolemn token of that ſame virtue of obedience; the ſame Apoſtle ſaying, in the ſame chapter, "Neither doth nature herſelf teach a woman to pray unto God unveiled." And hence, ſince the man is the head of the woman, and for the body to ſurpaſs the head would be a monſter in nature, it would be no leſs monſtrous in

the order of the univerſe for the woman ſo to ſurpaſs the man, who is her head, as to be in no reſpect under his authority, as would be the caſe if ſhe had the ſupreme power in a ſtate. This Apoſtolic authority we do not bring forward in order to ſolve by its means, although it ſuffices by itſelf to do ſo, our queſtion in this reſpect, which queſtion has been completely ſolved by the Law of Nature, but in order that thoſe things which the law of nature has, by diſcourſe of reaſon, accompliſhed, might be alſo proved by the authority of the Apoſtle.

Chap. LVI.

The Canon Law, even more ſtrongly than the Civil Law, rejects women from the Throne.

BUT, as the Apoſtle declares his meaning in that chapter by way of metaphor only, and ſo not openly but under the ſhadow of a ſimilitude, it ſeems time for theſe things to be more clearly made known to us, and every cloud of darkneſs taken away. We therefore aſk the Apoſtle to reveal openly, without a proverb, what he thinks on this ſubject. But the Apoſtle hath himſelf written, not to all people to whom it is given to know the myſtery of the eternal will in parables, but to a moſt learned man named Timothy the Biſhop, in theſe words: "But I ſuffer not a woman to teach, nor to exerciſe authority over the man, but to be in ſilence." (1 Tim. chap. ii.) Now in this paſſage he openly makes known the truth which we ſeek, and uſes no parable; for if he ſuffer not the woman to exerciſe authority over the man, he aſſuredly does not ſuffer her to reign over him, which is the moſt powerful ſpecies of authority; for the genus being forbidden, all the ſpecies are forbidden likewiſe; and, as a negative denies both in general and diſtributively, inaſmuch as the pride of authority is denied to the woman, the ſummit of regal power is alſo denied to her, kingly rule being the higheſt ſpecies of authority. Why, then, ſhould we wiſh to hunt out other enactments of the Canons as to whether the woman can exerciſe ſupreme power over the man, when the higheſt teacher of *Decreta*, all whoſe Epiſtles have been abſorbed into the ocean of the Canons, has already moſt clearly pronounced that the woman cannot reign over the man? And leſt the woman ſhould think ſhe could evade his ſentence, the Apoſtle hath fortified it with two of the moſt powerful ſupports, in that he has not permitted the woman to teach, but has deſired her to be in ſilence. What doctor or ſchoolmaſter teaches as diligently as doth a king, who corrects the unruly with fitting puniſhments? And who hath leſs to do with ſilence than a king, in that the cries of his ſubjects ſcarce allow him to keep ſilent? And hence, ſince the woman cannot teach, and the Apoſtle ſuffers her not to eſcape from ſilence, ſhe would not be capable of reigning even if ſhe had not been otherwiſe prohibited. And therefore, as the Civil, ſo alſo the Canon Law ſuffers not woman to reign; but the latter, much more expreſsly

and ſtrongly than the former, eliminates her from that higheſt dignity, the kingly power. So, then, O Mother and Son, why attempt any longer to haraſs the Judge with this ſuit? The Law of Nature has by diſcourſe of reaſon revealed the merits of each of your caſes. The ſentences which thoſe caſes deſerve, not only the Civil, but the Canon Law alſo has pronounced. And the judgments which you will therein hear declared have been formed by the Divine Law, ſince it hath taught that the woman is always ſubject to the man, and therefore debars you, the mother, from the kingdom, and, in thus rejecting her, hath altogether repelled and excluded you, her ſon, from ſucceeding her. Call to mind, therefore, I counſel you, that ſentence of St. Auguſtine, where he ſays, "It is a great diſeaſe of the ſoul, after a full reaſon hath been rendered, ſo far as is due from one man to another, always to endeavour to contradict. If we were determined always to give a reply to ſuch reſpondents, there would be no end of diſputing." Thus he writes in the Second Book De Civitate Dei. And therefore, ſince againſt everything which you have brought forward in this controverſy as good a reaſon has been given as, in my opinion, is due from one man to another, I counſel you to ceaſe ſtriving after further contradiction, leſt ye ſeem to be infected with the diſeaſe referred to, and know not how to find an end of argument, remembering that verſe of Cato, the moraliſt, which runs thus: "He who can with reaſon keep ſilence is neareſt to God."

CHAP. LVIII.

Concluſion of the Pleadings, and the Judge's way of preparing himſelf to pronounce ſentence.

HEARING theſe things, the King's Daughter preſently ſpoke as follows: I do not, as my uncle ſuppoſes, conſider him to have given a ſatisfactory anſwer by his reaſons to the points which I ſtated; nevertheleſs, when I conſider the wiſdom of our Judge, which clearly perceives the merits of all this caſe, fearing leſt his gravity be tired out by a further lengthening of the argument, I do not intend to make any further reply. The Son alſo profeſſed the ſame intention; whereby there was left to the Uncle no further grounds for rejoinder. The Judge, therefore, fixed another ſet time for the parties aforeſaid to appear in the ſame place and hear judgment and final ſentence in the premiſes. On the arrival of the appointed time, the Judge took his ſeat in the place aſſigned, and the parties appeared in perſon before the judgment-ſeat, and each of them urgently petitioned that ſentence might be given in his favour. Thereupon the Judge, keeping ſilence for no great interval, with downcaſt looks, as if collecting all his ſpirit within him, at length raiſed his eyes by little and little, and thus, in modeſt ſtyle, began his diſcourſe.

CHAP. LIX.

The Judge firſt ſhows how the Woman is ſubordinated to the Man in the Order of the Univerſe.

WHEN in the depth of our mind we contemplate the ſupreme power of God, whereby out of nothing He called into exiſtence the fabric of this world and all that it contains, and when in like manner we ſearch out His wiſdom, whereby He created ſo many good and fair things, and things ſo various in kinds and qualities, which fill the world, we humble ourſelves, and wonder not a little. But when we behold His goodneſs, whereby He hath bound together all theſe things in ſuch an order that all thoſe creatures uniformly direct their individual movements and courſes to His praiſe and glory and to the good of man, we bleſs and praiſe God with yet increaſed admiration. In this order hot things are in harmony with cold; dry with moiſt; heavy with light; great with little; high with low. In this order angel is ſet over angel, rank upon rank in the Kingdom of Heaven; man is ſet over man, beaſt over beaſt, bird over bird, and fiſh over fiſh, on the earth, in the air, and in the ſea; ſo that there is no worm that crawls upon the ground, no bird that flies on high, no fiſh that ſwims in the depths, which the chain of this order binds not in moſt harmonious concord. Hell alone, inhabited by none but ſinners, aſſerts its claim to eſcape the embraces of this order. The Philoſopher alſo (iij. De Cœlo et Mundo) ſays that order is the proper nature of natural things; and again (xi. Metaphys.) he ſays that the good of the univerſe conſiſts in order. But when a man abandons order, his actions are wicked, his alms are turned into hypocriſy, his vows into an abomination, his prayers become hateful, and his faſting brings nothing but puniſhment upon the faſter. What more ſhall I ſay? There is nothing virtuous and nothing good which doth not obſerve the law of order. Wherefore St. Auguſtine, defining virtue, ſays, "Virtue is the order of love" (xv. l. De Civ. Dei). And hence not even charity, the greateſt of the virtues, has eſcaped the tie of order, for the Bride ſings thus: "God hath ordered love in me." And what is this order but a diſpoſition of equal and unequal things aſſigning to each its proper place? (xviij. l^r. De Civ. Dei) And what is the proper place of a ſuperior but the condition and degree by which a ſuperior is ſet over an inferior? and what is the place of an inferior but the condition and degree whereby he is placed under the ſuperior in the order of the univerſe? For it is true that God created as many different kinds of things as He did creatures, ſo that there is no creature which doth not differ in ſome reſpect from all the other creatures, and by which it is in ſome reſpect ſuperior or inferior to all the reſt. So that from the higheſt angel down to the loweſt of his kind there is abſolutely not found an angel that hath not a ſuperior and inferior; nor from man down to the meaneſt worm is there any creature which is not in ſome reſpect ſuperior to one creature

and inferior to another. So that there is nothing which the bond of order doth not embrace. And ſince God hath thus regulated all creatures, it is impious to think that He left unregulated the human race, which He made the higheſt of all earthly creatures. And ſeeing that He made that race twofold by means of two ſexes, the male, namely, and the female, inaſmuch as we cannot imagine that He ſubordinated the male ſex, which was firſt created, and which God deſired to be over all other earthly creatures, to the female ſex, which was created for the help of man, we are of neceſſity compelled to acknowledge that the female ſex was in this creation ſubordinated to the male. This, therefore, is the order in which at its origin human nature was eſtabliſhed. Theſe are the natural degrees of man and woman. At their creation it was enjoined them that in this order the man ſhould be over the woman, and ſhe be ſubject to the man. And therefore to forſake this order would be to forſake the order of the univerſe, and would therefore be ſin, which is defined to be a deſertion of order.

Chap. LX.

What was the nature of the Man's Pre-eminence (or Prelacy) in the time of his innocence.

SINCE, therefore, we have diſcovered in what degree man was appointed over the woman and all the other earthly creatures, it behoves us now to inveſtigate what was the nature of his ſtate and dignity in that degree over the woman, when neither of them had as yet fallen into ſin. For the man was not then ſet over (*præfuit*) the woman, as a maſter over a ſervant, a judge over a criminal, or a guardian over his ward. For at that time the man did not poſſeſs a dominion of fear over the woman, whom the Lord gave to him for a companion; nor was there any ſin in the woman which the man could correct as a judge; nay, if by threats or blows the woman had been driven, like a ſchoolboy, to be virtuous, ſhe would not have had the merit of righteouſneſs, as the man had, who at that time obſerved righteouſneſs without being compelled thereto; but, as is mentioned above, St. Thomas ſays that in a time of innocence man would have been ſet over man, as one who holds an office is ſet over, not a ſlave, but a free man, directing him to his (the free man's) intereſt, or to the common good; and this pre-eminence St. Thomas in the ſame place calls a dominion. Yet becauſe the condition of the human race was ſo changed after ſin, that there can no longer be found on the earth a pre-eminence (*prelatia*), which could be juſtly likened to the pre-eminence (or prelacy), which man had before he ſinned, it will be well for us to inveſtigate the pre-eminence of the angels, which has not been changed by ſin, in order that we may more certainly underſtand, by compariſon of it, what kind of pre-eminence was that of man, while he preſerved, like an angel, his innocence.

Chap. LXI.

In what way the Pre-eminence of Man upon earth reſembled the Pre-eminence of an Angel in heaven.

IT is not to be doubted that the ſuperior angels have dignity and power above the inferior, ſo that the inferior are obedient and ſubject to them. For in the Apocalypſe it is written, "Michael fought, and all his angels with him." Thoſe, then, who are called his angels were his ſubjects. And (10th chapter of Daniel) an angel ſaid to Daniel, "Michael, one of the chief princes, came to help me." Behold, he acknowledged that Michael had not only the power of helping, but alſo the rank of prince for himſelf and other angels. The names alſo of the different orders of angels, which are called Principalities and Powers, teach us that ſome angels ſhine in power and dignity above others. So too Cherubyn, which is interpreted to be *fulneſs of knowledge*, implies by the name that angels excel angels in the greatneſs of knowledge, and ſo are worthy to enlighten their inferiors. So, too, the name of Gabriel, which is interpreted to mean *ſtrength of God*, proclaims that angels excel angels in ſtrength. The names alſo of the other angels teach us that they differ in virtues, and that ſome excel others therein, and have the pre-eminence over their inferiors. So likewiſe their diviſion into nine orders, each of which, from the higheſt Seraphyn, is placed under ſome other. There is no need, therefore, to diſcuſs this ſubject at greater length, ſince theſe things ſuffice to reveal that pre-eminence among angels which was the object of our ſearch. For it is thereby ſhown that the ſuperior angels are above (*præeſſe*) the inferior in virtues, rank, power, and office, virtues whereby they are able to direct and enlighten them, and ſo are made worthy to hold power and office over them. And hence the inferior angels are rightly ſubjected to the ſuperior, and on account of their dignities venerate them, and on account of their powers and offices obey them, and thereby obey God, and preſerve in heaven the order which, as we have ſaid, exiſts alſo on earth. In this way, too, the firſt man had the pre-eminence over the firſt woman in right of the virtues by which he was able to guide and teach her, and thereby he was made worthy to have, and in fact had over her the office and power of directing her to her own intereſt and the common intereſt of both. And for the ſake of theſe virtues it was to the woman's advantage to be ſubject to the man, and ſhe was ſubject; and by reaſon of his rank it was becoming that ſhe ſhould reſpect the man, and on account of his power and office ſhe was bound to obey him, by doing which ſhe alſo obeyed God, and herein preſerved the order of the univerſe, which to keep was to practiſe innocence, and which to abandon was to forſake righteouſneſs.

CHAP. LXII.

In what Virtues the Male Sex excels the Female.

BUT it is now worth while alſo to examine in what virtues, other than thoſe already mentioned in this diſcuſſion, the male ſex has been created pre-eminent over the female, and ſo by way of fitneſs poſſeſſes the dignity and power above ſtated over the woman. The male ſex was made ſuperior to the female in all that kind of moral virtue by which the world is ruled and its peace preſerved. Hence Solomon, in Eccleſiaſtes, ſpeaking of both ſexes, ſays, "One man among a thouſand have I found, but a woman among all have I not found." But Solomon found woman to be as perfect in faith, hope, and charity, as devout and as holy as man, but not his equal in the moral virtues. In the time of innocence the woman did not abound in wiſdom; for Eve was deceived, but Adam was not deceived. (1 Timothy, chap. ii.) And therefore, after the ſin of man, the Apoſtle decreed that the woman ſhould learn in ſilence with all ſubjection, but permitted her not to teach. The Church alſo ſeems to think that the woman is not by nature equal to the man in courage and ſelf-control, ſince, ſpeaking of female martyrs, ſhe ſays, "Even in the frail ſex Thou haſt granted victory," by which words ſhe diſtinguiſhes the female from the male ſex by the mark of frailty, and marvels, as it were, at the miracle of courage given by grace. The Wiſe Man alſo ſeems to be aſtoniſhed at courage in a woman, when he ſays, "Who can find a brave woman? Her price is far beyond all bounds." Nor does the Church conſider women to be as ſteady or conſiſtent in juſtice as men, ſince ſhe has denied all judicial power to them (33rd Queſtion V^a *Mulierem*). Scripture abounds alſo with very many ſimilar leſſons, which for brevity we now omit, by which we are taught that as God made man a little leſs than the angels, ſo alſo He made woman leſs than man, and thereby man in the times of innocence was worthy to have the power and office of directing her, as one angel doth another. For there is no ſex in ſouls; for ſpirits are neither male nor female; ſex exiſts only in bodies. Now no one doubts that the bodies of men ſurpaſs the bodies of women in natural gifts; for women are not, like men, robuſt in ſtrength, ſagacious in intellect and nature, active in body, bold in ſpirit, or ſuperior in any bodily virtue; and hence it is certain that nature has made the female ſex inferior to the male in natural gifts. And ſince order is ſuch an arrangement of like and unlike things as aſſigns to each its proper place, the order of nature has aſſigned a higher place to the male than to the female ſex. Wherefore we ſee of neceſſity that the female ſex is ſubordinate to the male by the Law of Nature, and is therefore ſubject to it in the order of the univerſe. And if women are more beautiful to look upon than men, this confers

upon them no ſuperiority. For woman's beauty delights men more than it delights women themſelves, and women thereby miniſter greater pleaſure to men than to themſelves, and are ſerviceable to men, like plants that produce delicious flowers for their uſe.

CHAP. LXIII.

The Pre-eminence of the Man over the Woman is likened to the Pre-eminence of the Soul over the Fleſh, and of the ſuperior part of the Reaſon over the inferior.

BUT ſeeing that the likeneſs of the angelic pre-eminence, which is heavenly and remote, ſeems to differ from the likeneſs of man's pre-eminence over the woman, who both flouriſh in the body, we will come yet nearer to the matter, ſo that this pre-eminence of the man in his ſtate of innocence, which we are trying to explain, may be put in a clearer light. St. Gregory, writing to Auguſtine, the Apoſtle of the Engliſh, ſays that three things are neceſſary to conſummate a ſin, ſuggeſtion, enjoyment, and conſent. So that as the ſerpent ſuggeſted the ſin to the woman, and ſhe took delight therein, and the man conſented to it, ſo ſin has its beginning in the Devil's ſuggeſtion, its growth in the delight of the fleſh, but its accompliſhment in the conſent of the mind. And the Maſter of the Sentences, in his ſecond Book, affirming the ſame, ſeems alſo to be of opinion that if Adam's conſent had not been given to the woman's ſin, original ſin would not have been conſummated. St. Auguſtine alſo, in reference to this text, "Nor of the will of the fleſh," ſays, that the woman ought to be ſubject to the man, as the fleſh is to the ſpirit; and that as the poſſeſſions of a houſe are ſquandered in which the woman bears rule and the man is ſubject, ſo is that man loſt in whom the fleſh rules over the ſpirit, and the lower powers over the higher part of him; in which ſentences the pre-eminence of the man over the woman ſeems to be compared to the pre-eminence of the reaſoning faculties over the ſenſual appetites, or of the ſoul over the fleſh. But the Maſter himſelf, not only in the ſaid Book, but alſo on St. Paul's 1ſt Epiſtle to the Corinthians, chap. xi., when treating of this ſubject, ſeems to compare the higher part of the reaſon to man, and the lower part to woman. So that the higher part, cleaving to God, and ſtretching itſelf out toward that which is eternal, in the contemplation of unchangeable truth, is held to be made after God's image; but it was not good for it to be alone, and therefore there was made as a help for it ſomething like unto itſelf, the lower part, namely, of the reaſon, that takes thought of things temporal, which cannot, any more than woman, be called the image of God; but as the woman is the glory of the man, it too deſerves to be called the glory of the ſuperior part of the mind, ſeeing it is ſubject and obedient to it. And hence this pre-eminence of the ſuperior part of reaſon ſeems very like the pre-eminence which in the time of innocence the man had over the woman. And, indeed, the reſemblance is very ſtrong, ſince, as the

Apoſtle ſays, "the man was not created for the ſake of the woman, but the woman for the ſake of the man, nor is the man of the woman, but the woman of the man." So, likewiſe, the lower part of the reaſon is for the higher, and of it, ſo that there is no good action among men which doth not proceed from the higher part, and is done for the ſake of it. And as the man and the woman are two perſons in one fleſh, ſo the ſuperior and inferior parts of the reaſon are two faculties in one ſoul. Man has been ſet over the macrocoſm, the higher part of the reaſon is over the microcoſm. Of this part the Apoſtle ſpoke, when he ſaid, "Be renewed in the ſpirit of your mind;" and, in another place, "Put ye on the new man, which is renewed in the knowledge of God after the image of Him who created him." For, as is mentioned above, the ſaid Maſter ſays, on the Epiſtle above referred to, "None can doubt that man was made in God's image, not in reſpect of the body, nor in reſpect of any part of the ſoul indiſcriminately, but in reſpect of the rational mind, wherein there can be the knowledge of God, which ſubſiſts in the higher part of the reaſon. And that only is the image of God which inheres in unchangeable truth. This mind on account of its union with the fleſh, by which it and the fleſh form one man, is called man made after the image of God." So he writes. What then can be more like to the man than the ſupremeſt part of the mind, which, being joined to the fleſh, is entitled even to be called man? And what can be more like the woman than the inferior part of the reaſon, which was made out of the ſuperior part, and as a help to it, and which together form one mind, as Eve, made from Adam as a help to him, was with him one fleſh? Nor is it any objection to this analogy that the woman is capable of committing mortal ſin apart from the man, and even in contradiction to him, which the fleſh cannot do apart from the ſoul; ſince the man and woman have two rational ſouls, in which they have ſeparate wills, and therefore the Lord ſays of them, "Two ſhall be in one bed, the one ſhall be taken and the other left;" but this cannot be the caſe with the ſoul, which is one and one only in the fleſh and in the rational part, ſo that neither the former can be condemned without the latter, nor the latter without the former. But among things the moſt like there are of neceſſity certain differences, becauſe that which differs in nothing is not like, but the ſame.

CHAP. LXIV.

The Writer here combines the different kinds of Pre-eminence taken notice of above.

THE higher part of the mind has the pre-eminence over the lower in theological virtues, and ſo is worthy to have power over the lower, and the office of directing it, and therefore, by reaſon of its rank, it is entitled to receive veneration from the lower; and the lower is bound to obey the higher by reaſon of its power and office, and

ſo is deſervedly ſubjected to the higher, and owes it obedience and honour. For the inferior part is not ſtrong in faith, like the higheſt part, which, by unwearied contemplation of unchangeable truth, draws therefrom the truth of faith, of which the lower part knows nothing, except ſo far as the higheſt part ſhall have revealed it. In hope alſo this ſuperior part is pre-eminent, ſeeing it hath not wet its wings with the waters of this world, but haſtening heavenwards flies forth, rejoicing to know no hindrance, ſo that of it can be ſaid (in the laſt of Canticles), "Who is this that cometh up through the wilderneſs, abounding in delight, leaning upon her beloved?" This part alſo, cleaving to God like a Seraph, glows with the ſweeteſt love, and of this the Apoſtle ſays, "He that is joined unto the Lord becomes one ſpirit with Him." (1 Cor. vi.) But this higher part needs not to be extolled with theſe human laudations, nor to be preferred by the praiſes of men above the part which is intent upon worldly things (*agibilia*). For the Higheſt Truth ſaid concerning Mary, who choſe to live according thereto, "Mary hath choſen the beſt part." And hence, as we have ſhown above that the man ſurpaſſes the woman in moral virtues and the gifts of nature, and therefore worthily holds the power of guiding her, ſo too this higher part of the reaſon, ſhining pre-eminently in faith, hope, and charity, is worthy to have over the lower, which ſhines in theſe virtues only through it, pre-eminence and the power and office of both guiding and ruling. There reſults, then, from what has been written this moſt certain truth, that in the time of man's innocence the pre-eminence of the man over the woman was of the ſame kind, as is now that of a ſuperior angel in heaven over an angel next inferior to himſelf in rank; and as on earth is the pre-eminence of the ſoul over the fleſh, of the reaſon over the ſenſual nature, and of the higher part of the reaſon over the lower. And, therefore, as an inferior angel cannot exalt himſelf above his ſuperior, nor our ſenſual nature govern our reaſon, nor the lower part of the reaſon exerciſe dominion over the higher, ſo neither can the woman exalt herſelf over the man, whether, by the law of nature, to rule him, as ſovereign, or in any way to hold ſupreme lordſhip over him. And, conſequently, the woman cannot aſſume the lofty poſition of a king who knows no ſuperior, nor is ſhe capable of it, ſeeing that nature hath eſtranged her from that topmoſt height of dignity, and that the deciſion of law likewiſe hath excluded her ſex therefrom. Theſe arguments from analogies have very great force in law, inaſmuch as there is a rule of law in harmony therewith, that concerning like matters there is like judgment.

CHAP. LXV.

Pre-eminence is not repugnant to ſocial life.

WE have now ſhown by divers ſimilitudes of what kind was and is, by the Law of Nature, the pre-eminence of the man over the woman. And we have ſhown above that the man had this ſame pre-eminence over the woman in the time of their innocence, although their life was at that time only ſocial; becauſe the Lord had not yet ſaid to the woman, "Thou ſhalt be under the power of the man and he ſhall rule over thee." But before God pronounced that ſentence Adam had ſaid to the Lord, when the Lord queſtioned him concerning his crime, "The woman whom thou gaveſt to me for a companion, ſhe gave me of the tree and I did eat," by which words he ſhows that the woman was given to the man for a companion and not for a handmaid. Yet, that in that ſocial life the woman was ſubject to the man, and that he had the pre-eminence over her, has been by diſcourſe of reaſon already made plain. For the life of the citizens of heaven above, to whoſe ſociety the Church prays that we may come, is a ſocial life; the life of the ſoul with the body is ſocial, as is alſo that of the higher part of the reaſon with the lower; and yet in all theſe caſes there is no lack of pre-eminence, becauſe, as is ſhown in the former Part of the Treatiſe, pre-eminence ſtrengthens and does not divide ſociety. Wherefore, ſince the Law of Nature is the truth of juſtice which right reaſon is capable of revealing, it has now been ſhown that by the Law of Nature the woman is naturally ſubject to the man, and that the man has the pre-eminence over her.

CHAP. LXVI.

The prefigurement of the Church under the form of a woman proves the Woman's ſubjection to the Man.

MOREOVER the production of the firſt woman out of the ſide of the ſleeping Adam was a figure of the future production of the Church out of the ſide of the ſecond Adam, who ſhould ſleep upon the croſs. But the woman ſo produced from the man would not have been a type of Holy Church, unleſs ſhe were ſubject to the man, as the Church is to Chriſt. For it was not a lion or other bloodthirſty beaſt that was a type of the moſt gentle Jeſus, who was to be ſacrificed to God the Father; but the lamb, the gentleſt of animals, as He was of men, prefigured him typically. What is a figure but a material preſage of things future, juſt as prophecy is a vocal one? Hence figures ſpeak by means of reſemblances, and prophecy by means of words. And therefore that which was altogether unlike a future occurrence could not in any way have been a figure thereof. For

the marriage of our firſt parents could not have been a ſacrament of the marriage of Chriſt and the Church, if the firſt wife had not in her order owed obedience to Adam, as the Church doth to Chriſt. Therefore the firſt woman owed obedience to the man, as the Church to Chriſt, of the ſame kind, but not ſo great, for ſimilitudes generally prove reſemblance in quality rather than in quantity.

CHAP. LXVII.

The Grandſon's title is firſt effectually diſproved.

THE laborious oration of the King's Grandſon, by which he hopes in right of his mother to obtain the kingdom in diſpute, though ſhe herſelf be, according to all right, abſolutely excluded therefrom, is refuted by ſo many unanſwerable arguments, that it needs no further diſcuſſion; and therefore it now only remains for the parties to hear what we ſhall decree in this caſe.

CHAP. LXVIII.

Matter introductory to the Judgment.

THE purity of gold, the choiceſt of metals, though the gold be cleft, cannot be known until it be proved by trial of the fiery furnace. The craftſman knows not the harmony of his bells until they be ſtruck; nor the harp-player the concord of the ſtrings until he has heard the notes from the higheſt to the loweſt. Who, without a trial, could contemplate the merits of ſo great a cauſe as this, or, without hearing the reaſons on both ſides, could evolve its hidden truth? The ſmell of his ſon's garments deceived the patriarch Iſaac; the touch, the largeſt of the ſenſes, deceived him likewiſe; ſight helped him not in his blindneſs, nor did his taſte decide for him that the food, which his younger ſon brought, was not the produce of the elder brother's chaſe. His hearing was the only ſenſe which deceived not the old man. This ſenſe clearly detected the ſon to be a ſupplanter, craftily impoſing upon the father. By hearing, as the Apoſtle ſays, faith, the foundation of our religion, is learnt. And truly by having heard the profound opinions and arguments, which in this trial the parties aforeſaid have poured forth, we have now drawn out the truth which the queſtion propounded requires for its ſolution—truth, which, though it was all along in our power, did not exhibit itſelf openly, until, ſtirred up by the force of arguments, it was rouſed as it were out of heavy ſleep. But, being awakened by their clamour, it now reveals itſelf naked and ſhining to our ſight, ſo that henceforth we need beſtow no further labour on its inveſtigation; nay, rather, we think that by pronouncing our ſentence we ought to

promulgate it to all poſterity. Wherefore, ſince in this cauſe, now ſo thoroughly ſifted, the parties aforeſaid have by mutual conſent concluded their pleadings and renounced all right to any further allegations, we proceed to render judgment in the ſame, as follows.

CHAP. LXIX.

The Judgment.

IN the name of God, Amen. Inaſmuch as the King of the Aſſyrians, acknowledging no ſuperior in things temporal, died without ſons, leaving behind him an only Daughter, and a Brother, and alſo a Grandſon by the daughter, who have all ſubmitted themſelves to our will, ſentence, and decree in the matter of the right of ſucceſſion to his kingdom; we, having with mature deliberation liſtened to their allegations and replies, and alſo to the reaſons and arguments which they have framed; and having, not only from theſe, but alſo from the things which we have juſt unfolded, moſt clearly diſcovered and arrived at the undoubting conviction that a woman is not capable of holding a kingdom which is ſubject to no ſuperior, and that her ſon, therefore, cannot by any Law of Nature, ſucceed in right of his mother to ſuch a kingdom, we, I ſay, adjudge, arbitrate, and by this our final ſentence decree, that the Brother aforeſaid hath the right to the kingdom and in the kingdom in diſpute, by title of ſucceſſion as heir of the deceaſed King his late brother. Wherefore we order that he be inveſted with and in full and peaceable poſſeſſion of the kingdom. And we abſolutely exclude therefrom the Daughter and Grandſon aforeſaid, and declare them to be devoid and deſtitute of all right and title to the ſame.

CHAP. LXX.

The Author here remits his Work for the examination of the Supreme Pontiff.

IF in the preceding Treatiſe we have arrived at firm and impregnable concluſions, we have extinguiſhed that fuel of malice which has kindled up to this time ſuch unceaſing wars among kings, I mean that inveterate error by which women, and their heirs through them, have been thought able to ſucceed to the throne in ſovereign kingdoms. This was that crafty ſerpent, nurtured on the poiſon of ambition, which, inſinuating itſelf into the minds of princes, poiſoned them ſo with the malice of its virus, that there was ſcarce a king who, inflamed by the angry tumour growing therefrom, did not betake himſelf to the claſh of arms, by which he thought to appeaſe the fever of that venom. Peace thus was everywhere ſo diſturbed among men, and the ſtrength of the Church ſo weakened, that there could ſcarce be found a prince who was ſo free from

theſe great perils of war that he could give himſelf to her defence; and, therefore, the hand of her enemies has grown mighty againſt her, ſo that, haraſſed not only by the blaſphemies and inſults of barbarians and infidels, but alſo by wrongs inflicted on her by her own ſons, ſhe hath not found one comforter among all ſhe loves. And if the iniquity of the aforeſaid error continue longer to prevail, without doubt the Church, having ſcarcely any prince to defend her, will have to ſuffer evils ſtill greater than theſe. Do thou, therefore, my little Book, ſet forth, and ſeek with all ſpeed the City (of Rome), and there caſt thyſelf at the feet of the Vicar of Chriſt, the bridegroom of the Church, and moſt humbly pray him that he condeſcend to look upon thee with the eyes of his piety; and if he ſhall find thee to be right and juſt, that he condeſcend to impart it to all the ſons of the Church; and if he ſhall find in thee, which God forbid, anything that departs from the right way, that by correction of his kindneſs he annul it, ſince ſuch falling away hath not been of malice, but only from the clouds of ignorance. For to him, as is related in the former Treatiſe, Moſes refers every difficult and doubtful judgment that can ariſe in the courts of men, deſiring that whatſoever he ſhall have judged or taught according to the law of God ſhould be the judgment of all the ſons of men, who ſhould follow his ſentence and not deviate to the right hand or to the left. (Deut. xvii.)

CHAP. LXXI.

Cuſtom cannot confer upon a Woman the right of inheritance in a Kingdom which knows no ſuperior.

NOR can it move the Holineſs of the moſt bleſſed Father that he hath ſometimes ſeen women, and even men under colour of a title derived from women, make their way to the royal throne; for if the things here handled be free from error,—though a woman ſhall have preſumed to act the prince, adorned with the diadem and all the other enſigns of royalty, and have lived as king in a kingdom acknowledging no ſuperior,—yet doth ſhe not poſſeſs the office of king, nor is inveſted by ſuch means with the kingdom. Since, therefore, the female ſex is not capable of holding it, the concluſion has, in this Treatiſe, been firmly eſtabliſhed, that neither can a man hold ſuch a realm through a woman's title. And thus the ſentence here pronounced, if it be right, allows none to doubt that woman and man alike, if they uſurp a kingdom in ſuch faſhion, act unjuſtly, and therefore commit ſin. What right, then, in ſuch a caſe can be conferred on man or woman by uſe or long cuſtom, which has grown up on nothing but a heap of ſins? Can it tranſmute a ſin into a virtue, or change an unlawful thing into a lawful? A crime repeated is a deeper offence than when committed at the firſt; uſe, therefore, aggravates guilt, but cannot do away with ſin. Wherefore it is only the *bonâ fide* poſſeſſor who acquires a right by preſcription; the rule of law declaring that the *malâ fide* poſſeſſor hath no preſcription

by any length of time. And another rule ſays, "That which ſubſiſts not of right from the beginning is not confirmed by lapſe of time;" and, therefore, cuſtom doth not transform anything into law, unleſs it hath been bleſſed with a righteous origin. And hath it not in this Treatiſe been proved that the ſupreme rule of women over men is not of the nature of being, and ſo not of the nature of things? How, therefore, can that grow into uſe which abſolutely doth not exiſt? Could a plebeian, by transforming himſelf in ſtage-plays into the character of a king, even though his anceſtors from the remoteſt times had done the ſame, thereby acquire any preſcriptive right to the regal dignity? In very truth, the ſupreme command of a woman over a man is like a character in a play, which has only an apparent and not a real exiſtence. Among the ancients idolatry was cultivated with very famous rites, and cuſtom ſo raiſed it into a law among them that the rulers of the world deſtroyed thoſe who deſpiſed it, not only as tranſgreſſors of the law, but alſo as blaſphemers; yet what could be more wicked and more remote from law than that crime? The ſanctity, diligence, and teaching of the Church have now baniſhed idolatry from almoſt all quarters of the world. Would that ſhe had alſo eliminated from all her boundaries the miſchief of the error which is here expoſed! Idolatry haraſſed the Church from without with foreign war. This error is waſting her within, and weakens her by inteſtine war, ſo as no other ſin that hath ever yet broken out among Chriſtians hath oppreſſed her. Wherefore as the iniquity of it hath done the greateſt hurt to the Church, ſo there is no doubt that the riddance of it would confer upon her the greateſt relief. Come, then, Holy Father, apply a remedy to this diſeaſe of the Church, that, as your Holineſs hath ſucceeded in authority and honour to your holy predeceſſors who vanquiſhed idolatry, ſo by caſting out this kind of demon you may ſucceed them, alſo, in a meritorious life and in perpetual praiſe; as a good omen whereof your Bleſſedneſs will reckon it to be reſerved for yourſelf to deal with this malady,—a poiſon the like of which none of your predeceſſors in the Church to this time, ſo far as we read, hath ever extinguiſhed. And thereby your Holineſs, who hath, as it were, come late to the dreſſing of the Lord's vineyard, will earn as great reward as he hath earned who was hired at daybreak to labour therein.

THE END.

REMARKS UPON THE PRECEDING TREATISE,

WITH

TABLE OF QUOTATIONS AND NOTES,

BY THE TRANSLATOR.

Introductio materie — De Joh. Fortescue de Laudibus Legum Anglie

Ff-5-22

a Ferventi dudum in Regno Anglie nephandissima
rabie illa qua pressi fuerunt Rex H. Sextus cum Margareta
Regina consorte sua filia Regis Jerusalem et Sicilie de
eorum unigenito Edwardo principe Wallie inde expulsi sunt
Ubi quamvis demum Rex ipse per subditos eius deprehensus
carcere diutinum passus est horrorem. Omni Regina illa
cum sobole sua patria sua sic explosa in ducatu Barrensi
sub dicti Regis dominio morabantur. Princeps ille
mox ut factus est adultus militari totum se contulit
disciplinae et saepe ferocibus et quasi indomitis insidens
caballis eos calcaribus urgens quandoque lancea quandoque
cuspide aliisque instrumentis bellicis sodales suos
juvenes sibi famulantes bellando more invadere
ferire et militaris gymnasii rudimenta delectabat.
Quod cernens miles quidam grandevus predicti Regis
Anglie Cancellarius qui etiam ibidem se eadem clade
exulabat principem sic affatur.

Hic Cancellarius principem monet ad disciplinam legum

b Gaudeo vero serenissime princeps super nobilissima
indole tua videns quanta aviditate militares tu
amplecteris actus. Convenit namque tibi talia delectari
non solum quia miles es sed amplius quia Rex futurus es.
Regis namque officium pugnare est bella populi sui et eos
rectissime judicare, ut in primo Regum viii capitulo clarissime
tu docere poteris. Ut itaque armorum studiis et legum studia simili
zelo te deditum contemplarer, cum ut armis bella ita
legibus judicia peragantur. Quia Justinianus augustus expressius
liberans mentem in prohemio libri sui Institutionum
ait: Imperatoriam majestatem non solum armis decoratam
sed et legibus oportet esse armatam ut utrumque tempus
bellorum et pacis recte possit gubernare. Tamen ut ad
legum studia fervide te animent verba legislatoris
illius Moysi olim Synagoge ducis multo fortius excitabit
te incitabit quod Regibus Israel divina auctoritate.

R. Cotton

REMARKS.

THE queſtion which Forteſcue diſcuſſes in the foregoing treatiſe is (as ſtated in the opening paragraph of Part I.) that of the right of ſucceſſion to a ſovereign kingdom (without feudal ſuperior), when the king has died without male iſſue, leaving a daughter, a grandſon by the daughter, and a brother. His method of proceeding is to aſcertain by what law ſuch a queſtion is to be decided, which he does in Part I., while in Part II. he profeſſes to apply the law ſo fixed upon, that is to ſay the Law of Nature, to the claims of the ſeveral candidates. The deciſion is given againſt the daughter and her ſon, and in favour of the brother, contrary to the rule of ſucceſſion which has long prevailed in this country, but in favour of the title of the Houſe of Lancaſter, and of Henry VI., in whoſe intereſt the treatiſe was compoſed. There is indeed no alluſion to the caſe of the Engliſh ſucceſſion; but the writer's intention is evident, and is fully admitted in his *Declaracion made by John Forteſcue Knight upon certayn wrytyngs ſent out of Scotteland ayenſt the Kinges title of the Roialme of Englond*, in which he calls it "a booke which I wrote in Latin to enforce myne intent," namely, "that no woman ought ſovranly or ſupremely to reynge upon man." The argument, however, goes beyond the excluſion of women, and includes their male iſſue, for the purpoſe of ſhutting out the Houſe of York, which derived by a double female deſcent from Lionel Duke of Clarence, third ſon of Edward III., whereas Henry Bolingbroke "from John of Gaunt did bring his pedigree, being but fourth of that heroic line." This is a plea of which no trace is to be found in the claim put forward by Bolingbroke before the Eſtates of Parliament in Weſtminſter Hall, a claim deſcribed by Sir James Mackintoſh, as "ſingularly framed to include a falſe ſtatement of hereditary right, without ſurrendering the miſgovernment, which was the true and ſole foundation of the right of parliament," and which ran as follows:—"In the Name of the Fader, Sonne, and Holy Ghoſt, I, Henry of Lancaſtre, chalenge this Rewme of Ynglonde, and the Croune, with all the membres and the appurtenances, als I that am deſcendit be ryght lyne of the Blode comyng fro the gude Lord King Henry therde, and thorgh that Ryght that God of his grace hath ſent me, with help of my kyn and of my friendes to recover it; the which Rewme was in point to be ondone for

defaut of governance, and undoing of the gude Lawes." (Holinſhed, and ſee Rapin, vol. i. Book x. ed. 1732.) Henry IV.'s ſubſequent legiſlation for the ſettling of the ſucceſſion exhibits very clearly his perplexity upon this awkward ſubject of inheritance through females, as will be ſeen from Lingard's account, who, after deſcribing an Act of Parliament veſting the ſucceſſion in the king's four ſons and their heirs, continues thus:—"Beſides theſe ſons he had two daughters by the ſame mother; but they were purpoſely paſſed by, perhaps that he might not afford an additional argument in favour of the rightful heir, the Earl of March, who claimed by the female line. It was, however, plain that, according to the late ſettlement, the daughters of his ſons might inherit; and therefore, to do away all ambiguity two years later a new act was paſſed, limiting the ſucceſſion to his ſons and their iſſue male, and by this proviſion perpetually excluding the females. But then it was aſked, on what ground did he claim the crown of France? If females could not ſucceed, neither he nor his predeceſſors had any pretenſions, ſince their right could deſcend to them only through a female, Iſabella, the mother of Edward III. This objection diſconcerted the king, and before the end of the ſeſſion the laſt act was repealed." (Vol. iii. chap. v. p. 453, ed. 1849.) This famous French claim which the Houſe of Lancaſter derived from the Plantagenets, was indeed a ſtrong caſe of that "fomes maliciæ," that "error inveteratus," which Forteſcue denounces in this treatiſe as the cauſe of "tot guerrarum diſcrimina, tot bella civilia, quæ, nedum in nobiliſſimis Franciæ et Angliæ regnis, ſed in quàm plurimis aliis regionibus, invaluere" (Part i. 1.); but its incluſion within the ſcope of his condemnation is ſufficiently explained when we remember that he wrote at a time when his ſovereign and his royal pupil, exiles from their own kingdom, may be ſuppoſed to have abandoned all pretenſions to the throne of that country which then afforded them a refuge. Not many years before, however, things had been very different, and the tutor of the young king Henry VI., Biſhop Beckington of Wells, had written a treatiſe againſt the Salic Law, and in defence of the Engliſh claim to the French crown. (Harleian MSS., Britiſh Muſeum.) Not that the excluſion of women (the rejection of the "Titulus Filiæ Regis" in this treatiſe) was any bar to that claim; for, but for the operation of the Salic Law in that reſpect, both Edward of England and Philip of Valois would have been excluded by the daughters of the three laſt kings of France, but that "the query was, whether the Salic Law was limited to the perſons of the daughters, to exclude them from the ſucceſſion, or whether it extended to all their poſterity." (Rapin's Diſſertation on the Salic Law in the Hiſtory, vol. i. book x. Mackintoſh, vol. i. p. 285, ed. 1853.) To eſtabliſh this latter doctrine, not upon the narrow and ſhifting baſis of Municipal Law, but upon the broad and ſolid foundation of the Law of Nature, is the bold but futile endeavour of the great lawyer in the work now printed. To comprehend the method of proceeding, ſo alien from the modern mind, by which this concluſion is reached; to appreciate the quaint reaſoning, curiouſly compounded of manly intellect and childlike ſimplicity, the habit of far-fetched deduction from a text or

a word of the Bible, the inordinate reverence for the great authorities of Philoſophy and the Church, the waſte of thought produced by that kind of ſuperſtition; and, at the ſame time, the learning, ingenuity, and elevation of ſentiment which mark our author, the reader muſt conſult the treatiſe itſelf. But it may ſave him trouble to be furniſhed with ſome clue to the mazes of an involved argument, which is accordingly ſupplied in the following outline of its courſe.

The Argument.

Part I.

THE firſt thing is to determine the Law by which the queſtion at iſſue is to be ſolved. It is not the Civil Law, becauſe the ſucceſſion diſputed is that of a kingdom "not ſubject to Cæſar's ſway" (c. 3.) It is not the Canon Law, becauſe "the Church looks to heavenly things." It is the Law of Nature (c. 4), by which alone the human race was governed until the Law of Moſes was given, Divine in its origin, the ſource of the authority of all human laws, whether "cuſtoms," or "ſtatutes." Under the Law of Nature, the firſt kings appear (c. 6), of whom Melchiſedech is a bright example. Whether there were kings before the Flood, or whether Belus king of Babylon was the firſt, may be doubted; but it is certain that the Law of Nature created, and ſtill regulates the office of king. By this law alone, therefore, can this queſtion of ſucceſſion be determined (c. 10). Two *objections* are made: 1. The choſen people ſinned in "aſking them a king." Can the law which was the cauſe of kings, and therefore of ſin, be good? 2. The *Jus Regis*, as declared by the prophet Samuel, was a bad law. "Doth there then ariſe between theſe two laws implacable war?" (c. 12). *Anſwer.*—1. The people of Iſrael had a king already, God Himſelf. Their ſin lay in aſking for a man, "like all the nations," not in deſiring monarchy itſelf (c. 15). 2. The king promiſed to Iſrael by the Lord and Samuel, was a king of a certain kind. ("He ſhall take your ſons and ſet them in his chariots, &c."). Beſides the "politick," and the "royal" form of government, (*ſee* St. Thomas, *De Regimine Principum*), there is a third, the "politick and royal." Of this kind the kingdom of England is an example. For there "the kings make not laws, nor impoſe ſubſidies on their ſubjects, without the conſent of the Three Eſtates of the realm." (c. 16). So Rome was "royal" under the kings, "politick" under the ſenate and conſuls, "politick and royal" under the emperors. The government of Iſrael was "politick and royal" under the judges, "royal" only, "a mere monarchy" under the king who was granted to their prayer. But St. Thomas ſays that the more any form of government reſembles the Divine, the better it is; and this muſt be abſolute monarchy. Did God then give a good law to a ſinful and rebellious people? On the other hand, was He the author of a bad law? "Lo, what ſtraits on every ſide!" (c. 17). Further compariſon between the Law of Nature and the Law of the King, which ſeems to

" put the Law of Nature in danger, inaſmuch as it aſſerts for the *Jus Regis* the foremoſt place among all laws." (c. 18-29). Monarchy is a product of Nature, there being always, as St. Thomas ſays, ſomething *naturaliter regulativa*. True, the Civil Law ſays that kingdoms were founded by the Law of Nations; but the *Jus Gentium* is nothing but " the laws of Nature's code which all nations obſerve " (c. 19). For inſtance, buyings, ſellings, and the rights of property, were invented by the Law of Nature," adopted and ratified by the Law of Nations. When the Lord called Adam's bread, which he ſhould eat in the ſweat of his brow, *his own*, could not Adam ſell it? Were not the firſtlings of Abel's flock his own? (c. 20). The Law of Nature, in fact, is original and eternal, the ſame in the ſtate of innocence as after the Fall, only the ſtate of man was changed by ſin. " It is the ſame ſun which hardens mud into brick, and melts ice into liquid, &c."—" Ceaſe then, oh! Law of Kings to ſtrive with the Law of Nature " (c. 20). Again, the Law of the King (abſolute monarchy), is not to be thought ſuperior to the law of a king governing *regaliter et politicè* (limited monarchy), as though it were more like the government of God (c. 22). St. Thomas indeed prefers the political government to the royal. But kings of both ſorts are equal, and equally like to God. (Advice is here given to a king reigning *regaliter*, to reign alſo *politicè*, —to " manage the commonwealth of the kingdom by the advice of many;" and to a king reigning *politicè*, to govern *regaliter*, when occaſion, ſuch as rebellion, invaſion, &c., requires it.—c. 23, 24, 25). The inability to change the laws without conſent of leading men of the kingdom, does not make the politick *régime* inferior to the royal. St. Thomas, after conſidering democracy, ariſtocracy, and oligarchy, prefers monarchy, provided it decline not into tyranny; that is, he prefers limited monarchy, or the government of a king ruling *politicè*. Nor is it any hinderance to kingly freedom not to be able to do wrong, any more than to that of the angels not to have the power of ſinning (c. 26). The *Jus Regis* is good in itſelf, but may be abuſed by kings offending againſt the Law of Nature (as Ahab and David), who are ſure to be puniſhed by God. In ſuch caſes, though ſtill called Law, it is ſo called only in the ſenſe in which the Apoſtle ſpeaks of the "law of ſin." Upon the whole, as the reſult of the compariſon between the Law of Nature and the *Jus Regis*, it appears that the former is ſupreme (c. 29).

Jus and *Lex* are now diſtinguiſhed (c. 30). The authority of the Law of Nature has been aſcertained, but not its *ſpecies*. *What* Law of Nature is it, which is to be judge of this controverſy? Is it Senſuality? Is it Natural Reaſon? &c. Theſe are rejected, like the ſons of Jeſſe, and the Truth of Juſtice is choſen, like David, as the law which is to govern (c. 31). The origin of the Law of Nature is now to be aſcertained (c. 33). At the Creation, when God ſaid, " Let us make man, and let him have dominion," He created at once the man and the office, *prelatum et prelaturam*, and the man perfect for the office. But without juſtice, which is a *conſtans et perpetua voluntas jus ſuum unicuique tribuens*, the world could not be governed. Juſtice, therefore, was ordained for man, along with the *prelatura mundi*. (c. 35).

But *jus* is inſeparable from juſtice, flowing from it as heat from fire, as the ſtream from its ſource (c. 36); nay, we may venture to ſay, begotten of it by a Divine generation, as the Son from the Father (c. 37). So Man and the Law of Nature (*Jus Naturæ*) are coeval, created in one and the ſame inſtant of time (c. 38). The effect of the Fall upon the relations between Man and Juſtice is then explained (c. 39-41), and why Juſtice is called *Jus Divinum* (c. 42). A difficulty is now ſtarted. If there be ſuch a Divine law as this, wherein conſiſts "the plenary power and virtue" of all other laws, what is the uſe of the latter? Why do the judges of France "conſume ſo many years of their pilgrimage" in ſtudying the laws of that kingdom? Why do the ſtudents of law in England expend "twenty years lucubrations," and ſome "two thouſand crowns," to obtain the loweſt degree in Law? The anſwer is, that the Divine Law is to all human laws as the ſun is to the moon and planets, and that the knowledge of the central luminary does not relieve men from the neceſſity of ſtudying the bodies which receive their light therefrom (c. 43).

The queſtion is now aſked, What are the reſpective ends of the Divine Law and of the Law of Nature? The end and object of the Law of Nature is virtue, to be attained upon earth. The end of the Divine Law is beatitude, which conſiſts in the Divine Viſion, to be attained only in heaven (c. 44). But "the Law which is ordained for the farther end governs the law which directs men to the firſt end," and in this ſenſe the Law of Nature, although Divine and daughter of the Divine Law, is ſubordinate to the latter. Thus, "the ſum and ſubſtance of the Law of Nature is thoroughly laid open" (c. 46.)

Part II.

A JUDGE is required to decide between the three claimants of the kingdom. Juſtice is conſtituted judge, and the three parties appear before her.

The King's Daughter.—It is written in the Book of Numbers, "When a man dies without leaving a ſon, the inheritance ſhall go to the daughter." I claim the inheritance accordingly (c. 2).

The King's Grandſon.—Public office differs from private property. A woman is not capable of filling even the offices of conſtable or marſhal—how much leſs that of king (c. 3).

Again, the ſentence of the Lord in the caſe of the daughters of Zelophehad (quoted by my mother) was given at a time when there was no king in Iſrael, and has no reference to a kingdom. It was alſo given to Iſrael only; but other nations have various laws of inheritance (c. 4). Moreover, in the kingdoms of Iſrael and Judah, women never did ſucceed to the throne (c. 5). (*The Grandſon now ſtates his own title.*) My grandfather died poſſeſſed of the kingdom. It cannot deſcend to my mother. It muſt therefore come to me. Our Lord was King of the Jews by hereditary right. But his mother was never Queen of the Jews.

Pronounce therefore, oh Judge, the ſame ſentence which was pronounced by the Three Kings of old under the inſpiration of the Holy Spirit.

The King's Brother.—Women are not capable of fighting or judging, which are the neceſſary duties of a king. Nature has adapted them for houſehold cares, not for the office of king (c. 8). The Civil and Canon Laws exclude women even from the offices of magiſtrate or judge. Moreover, Nature always uſes the beſt inſtruments for her purpoſe, which would not be the caſe if ſhe uſed women to govern kingdoms. Who hunts hares with cats? Nature makes greyhounds to hunt hares, and cats to catch mice (c. 9). (*He turns to anſwer the Grandſon.*) Argument from grant of land to a man and the iſſue male of his body, where, in default of male iſſue, the land reverts to the donor; from the law of entail in England, &c. (c. 10). As to the caſe of our Lord, Chriſt was not King of the Jews in right of his mother; for Joſeph, as appears from St. Matthew, was the heir of King David, and both could not have been heirs at the ſame time; but He was King by ſpecial appointment, and in a ſpiritual manner, and of a kingdom ſuch as that of which we daily ſay to God, "Thy kingdom come." Chriſt ſaid not to Pilate, "My kingdom is not *in* this world," but "My kingdom is not *of* this world." But it would have been of this world if it had come down to him by a carnal ſucceſſion. The example, therefore, of our Lord is of no avail to the King's Grandſon (c. 11).

Replication of the King's Daughter.—A ſon cannot ſucceed in his mother's lifetime. It is by death that every inheritance deſcends, and not by life. Such a right would be like the phœnix. The Law of Nature, which muſt decide this controverſy, knows nothing of it (c. 13). If women cannot reign, no more, by the ſame argument, can infants, old men or ſick men. But hereditary ſucceſſion muſt admit theſe, and rulers both bad and good. Moreover the king (or queen) may fight or judge by deputy. Conſider alſo what women have ruled in the world—Deborah, Tomyris, Semiramis, the Amazons; and, again, how frequently dukes, marquiſes, and earls, poſſeſſing ſovereign power, are ſucceeded by their daughters (c. 15).

Replication of the King's Grandſon.—My claim is not in right of my mother, who is only "the vehicle or medium whereby my grandfather's kingdom is tranſmitted to me by the Law of Nature, as a rope guides a beam into its place in a building, or as glue faſtens two pieces of wood together" (c. 16). Woman was made ſubject to man from her creation, as proved by Scripture. She received the command not to eat of the fruit of the tree while yet in Adam's body, and, when ſeparated from it, ſhe ſtill remained ſubject. She was made for the ſake of man, as his help-meet (c. 18). She is not the "image of God," as man is, who is God's deputy, and *pro-creator*. Upon the whole, for woman to bear abſolute rule over man is contrary to Nature; and if ſhe be *de facto* ruler of a kingdom, ſhe "ought to be expelled therefrom," and "ſo long as ſhe holds it, ſhe deſerts the order of her nature" (c. 21). As to the examples quoted of famous women, the deeds of Deborah and Judith

were "extraordinary gifts of grace," which prove nothing—no more than the judgment of Daniel proves that boys ſhould ſit upon the judgment-ſeat, or than Balaam's aſs ſets other people's aſſes an example of ſpeaking. Tomyris was raiſed up by God to puniſh Cyrus. Semiramis was an impious uſurper. The Amazons were an exception to all rules—"one ſwallow doeſn't make a ſummer"—and are extinct, which would not have been permitted "if their condition had been for the honour of the univerſe" (c. 22). As to dukedoms, &c., no doubt women ſucceed to ſuch great domains, and govern men (although the Civil Law forbids it), even as a mother governs her ſon, or a matron her houſehold. But this proves nothing, becauſe in theſe caſes they are ruled by ſuperior lords; and Nature allows women who obey men to govern men (c. 23).

Replication of the King's Brother.—The natural deficiencies of women are not the cauſe of their excluſion from the kingly office, but indications of the cauſe, which is the Divine Will. That will is declared in the Book of Geneſis—"Thou ſhalt be under the power of thy huſband, and he ſhall rule over thee." This is concluſive. But (it may be ſaid) this is Divine Law; and in Part I. it was laid down that the Law of Nature ſhould decide this controverſy. Is then the Law of Nature imperfect? (c. 25). No, but it is only diſcovered by diſcourſe of reaſon; ſo that if the author ſhall have gone aſtray from the path of reaſon, his deciſions will be merely his own, and not thoſe of Nature. It is ſafer, therefore, to obtain the judgment of the Divine Law alſo, which reſts not upon reaſon, but faith. The woman then, having violated her natural ſubjection, which was that of free obedience, was by Divine Law, as a puniſhment, made ſubject to man as her maſter. The poſitive enactment of Human Law adds force to the Law of Nature; as Cain under the Law of Nature was not ſlain, but under the Moſaic Law would have been put to death. Much more doth Divine Law produce the ſame effect, by confirming the Law of Nature, and excluding the woman yet more decidedly from the throne (c. 28). But it may be aſked, Why take ſo much trouble to expound the Law of Nature, if you have found another law more excellent and efficacious for the ſolution of the queſtion? The anſwer is, that "our cauſe had been finiſhed by ſentence of the Law of Nature," which was only confirmed by the Divine ſentence, "Thou ſhalt be under the power of thy huſband," &c. Thus, ſin is not ſin becauſe forbidden by poſitive precept, but is ſo forbidden becauſe already ſin by the Law of Nature (c. 29). Moreover, there is this difference between the two laws. The Law of Nature does not allow a woman to reign either *de facto* or *de jure*, a woman on the throne not being by nature a queen any more than the man who has taken another man's wife is a huſband; it is not *de ratione entis* that ſhe ſhould reign; but the Divine ſentence only attaches a penalty to that which the Law of Nature has forbidden. On the whole, "our concluſion is derived from law both Divine and human" (c. 30).

Replication of the King's Brother to the King's Grandſon.—The grandſon adroitly ſtrives to evade the rule of law, that "*Nemo poteſt plus juris in alium transferre quàm ſibi competit*," by

claiming through his mother, and not as her heir. But such a similitude as that of the rope and the beam, proves nothing; for the beam hung suspended in the rope, but the right to the throne was never suspended in the mother (c. 31). The grandson says, that if he had been the king's grandson by a son, and if his father had died in his grandfather's lifetime, he would have succeeded, although his father would never have had the power of bequeathing. This is true, but it is *nihil ad rem;* for "the king's son is capable of holding the kingdom, and in the lifetime of his father, has a kind of latent right to it" (c. 32). But to understand whether an inheritance can descend from a grandfather to a grandson, we must consider how the right of inheritance arose. Before the Fall, there was no property to bequeath, for all things were common. But "bread eaten in the sweat of the brow" became individual property, and capable of descent (c. 33). What is this descent? There is a ladder between heaven and earth, the steps of which are the causes of all things, and the sides justice and truth. "This ladder is the royal road of Nature." This is the ladder which Jacob saw in vision. Upon this ladder all things descend step by step. If the kingdom in question does not so descend, but misses any step, it is not a descent but a fall, and so "a transgression of the order of Nature" (c. 34). The causes which constitute the steps of the ladder of Nature are efficient and final causes. The father is the efficient cause of the son, the son the final cause of the father begetting him, &c. No one of these causes or steps can be passed over. "Thus summer glides into winter," &c. . . . . "The sun shining in Cancer will not jump into Capricorn." "With such a continuous course, Nature rules the globe," and "descent of inheritance cannot escape the law" (c. 35). Moreover, all things hang from the First Cause, which is God, by an unbroken chain of causes; and if a single link be wanting, all below it fall to the ground (c. 36). Now, the daughter is not a link or medium between the grandfather and the grandson, in respect of a kingdom, but only in respect of private property (c. 37). The same is proved by examples,—cases where the supposed medium of the inheritance is not capable of holding, and therefore not of transmitting it. Thus in England, property cannot pass through an attainted person to his posterity. Thus the daughters of Zelophehad would not have been suffered to succeed, if their father had been condemned in the rebellion of Korah, and so on. Therefore, both reason and example condemn the pretensions of the grandson (c. 38).

Duplication of the King's Daughter.—I deny that the woman was subject to the man before her sin. The Divine sentence, not the Law of Nature, made her subject. And by that sentence, married women only are subject to man. I have not surrendered myself to any man, and am therefore not involved in that sentence, nor excluded from the kingdom (c. 40).

Duplication of the King's Grandson.—I laugh at these two notions of my mother. In the first place, it is certain that man had a certain dominion and *prelatia* over the woman from the time of his creation, which was natural and pleasing to her. But after she had rebelled,

it became penal and compulſory (c. 42). In the ſecond place, this ſubjection has nothing to do with marriage. "It was not wedlock, but the female ſex that ſinned." The wife is not the ſervant, but the companion of her huſband. The Father would not have ſurrendered the mother of his Son to matrimony, if ſhe had been made leſs honourable thereby (c. 43). Moreover, the juſt Judge would not have puniſhed women unequally, or thoſe who are honoured by the ſacrament of matrimony more ſeverely than others. Although there was a dominion over the woman before the Fall, as St. Thomas and St. Auguſtine aſſert, it was very different from the lordſhip which man exerciſes over her ſince ſhe ſinned (c. 45). There are various kinds of dominion, political, deſpotic, royal, economical, or ſocial; and every woman is ſubject to one or other of theſe kinds of dominion. The Lord ſaid to the woman indefinitely, "Thou ſhalt be under man's power;" ſo that if ſhe is under the power of any man, ſhe does not eſcape the effect of the ſentence (c. 46). And now to anſwer my nother's uncle. The argument from the laws of France and England is good for nothing, theſe being only municipal laws, whereas we look to the Law of Nature. The Civil Law of guardianſhip (*tutelæ*) is in my favour. That law does not allow an aunt to be guardian to a ward, but yet, paſſing her over, commits the guardianſhip to her ſon. It is true that the Emperor cannot decide our cauſe; but the Civil Law is never againſt the equity of the Law of Nature (c. 48).

Duplication of the King's Brother.—If the Civil Law is admiſſible into the diſcuſſion, then the laws of all kingdoms and legiſlations are admiſſible. But I deny the analogy of the Civil Law of guardianſhip. A kingdom is real property and public dignity, guardianſhip is a private duty and a perſonal charge. Different ſubject matters are governed by different laws (c. 50). Beſides, the law as to the cuſtody of wards differs in different countries, and thus the Civil Law emanates from the authority of the Emperor only, and is not a decree of the Law of Nature (c. 51). But if we are to look to the Civil Law, we find that dignities deſcend through agnates, not cognates, males not females, as in the caſe of ſenatorial rank. The ſame therefore holds good of a kingdom (c. 52). Moreover, the Civil Law (as proved by many references), makes women incapable of the offices of judge or magiſtrate; and thus, as all kings are judges and magiſtrates, it incapacitates them for reigning even in ſubject kingdoms, going beyond the Law of Nature in ſtringency. The Canon Law does the ſame (c. 53) for the ſame reaſon (c. 55); and the Apoſtle confirms the Law of Nature, when he writes, "The head of the woman is the man," and "I ſuffer not a woman to teach, nor to exerciſe authority over the man" (c. 57). "So then, oh! mother and ſon, the Law of Nature has revealed the merits of your claims, and the ſentence which thoſe claims deſerve both the Civil and the Canon Law have alſo pronounced" (c. 57).

The Judgment.

The Judge extols the order of the univerſe. In that order no creature, angel, or man, is without ſuperior and inferior. In the human race, then, made twofold by two ſexes, there muſt be ſubordination, and it muſt be of the woman to the man. To forſake this order would be ſin (c. 59.)

From the beginning, in the time of innocence, the man had a pre-eminence (*prelatia*) over the woman, but without compulſion; for if the woman had been obedient by compulſion, ſhe would not have been innocent (c. 60). His pre-eminence was like that of the ſuperior angels over the inferior, by reaſon of a certain ſuperiority of virtue by which he was able to guide and teach her (c. 61); not that he exceeds her in the virtues of faith, hope, charity, in devotion or holineſs, but in the "moral virtues" of courage, ſelf-control, ſagacity, the virtues "by which the world is ruled" (c. 62). Again the pre-eminence of the man over the woman is like that of the ſoul over the body, or of the higher reaſon over the lower. "Theſe arguments from analogies have great force in law" (c. 63, 64.) Moreover the woman produced out of the ſide of Adam was a figure of Holy Church produced out of the ſecond Adam; but ſhe could not have been ſo unleſs ſhe were ſubject to the man as the Church to Chriſt (c. 66). The judgment is then given in favour of the King's brother, and ſubmitted to the examination of the ſupreme Pontiff.

The foregoing analyſis does not ſhow the numerous authorities by which Forteſcue ſupports his argument, nor the extent of his reading, which will be evident from the ſubjoined Table of Quotations. Next to the Scriptures, to which his references are numerous, he makes moſt frequent uſe of Auguſtine, Aquinas, Ariſtotle, Boethius, and the civil and canon laws. In the firſt part, eſpecially, where he treats of Law (in a manner which reminds one of the Firſt Book of Hooker's Eccleſiaſtical Polity), and of forms of government, he relies mainly upon the *De Civitate Dei*, and the remarkable treatiſe of Aquinas called *De Regimine Principum*. But there are alſo quotations from other fathers and ſchoolmen, from ſeveral of the claſſics, and from writers, now little known, of the 13th, 14th, and 15th centuries. In verifying theſe numerous references, and compiling the Notes and Illuſtrations, I have received much valuable and friendly aid from the Rev. W. Stubbs, Profeſſor of Modern Hiſtory at Oxford. I am alſo much indebted to the Right Rev. Dr. Ullathorne, Roman Catholic Biſhop of Birmingham, to the Prior and the Librarian (the Rev. T. B. Snow) of St. Gregory's College, Downſide, to Sir Robert Collier, M.P. (now Attorney-General), and to Richard Sims, Eſq., of the Britiſh Muſeum.

Strawberry Hill, *Jan.* 1869.

TABLE OF QUOTATIONS.

PART I.

CHAP

I. Ariſtotle, "omnia amamus," &c. See note.

Seneca, Epiſt. 8.

IV. Auguſtine, De Civitate Dei, xv. xvi.

Joſephus, "in libro ſuo de Antiquitatum Hiſtoriis." This is a general reference to the chronology of Joſephus, placed at the heading of each book of the Antiquities of the Jews.

Canon Law, Decretum, pars i. diſtinctio i. cap. 1.

V. Diſt. viii. cap. 1. *Quo jure*, in fine.

Diſt. ix.

Diſt. v. cap. 1. and the "gloſs."

Diſt. i. cap. 1. *Omnes.*

St. Thomas Aquinas, in Primâ Summæ, quæſtione xcvi. De poteſtate legis humanæ, articulo 2.

Varro.

This ſentence is quoted by Vincent of Beauvais, Speculum Hiſtoriale, v. 59, and in his Eruditio Puerorum Regalium, cap. iii.

VI. Joſephus, Antiq. Jud. i. 11.

Civil Law Digeſts, lib. i. tit. i. lex 1.

VII. Canon Law, Decretum, pars i. diſt. vi. in fine.

Auguſtine, De Civ. Dei, xvi. 11.

Cicero, De Officiis, iii. 4.

Homer, Iliad, Σ. 109.

> καὶ χόλος, ὃς τ' ἐφέηκε πολύφρονα περ χαλεπῆναι,
> ὅς τε, πολὺ γλυκίων μέλιτος καταλειβομένοιο,
> ἀνδρῶν ἐν στήθεσσιν ἀέξεται ἠύτε καπνός.

Aquinas, De Regimine Principum, i. 10.

Ariſtotle, Politics, v. 12 (quoted in De Reg. Prin. i. 10).

Seneca, Naturales Quæſtiones, vii. ix. 3.

Diodorus Siculus, Bibliotheca Hiſtorica, i. 44, 45. Compare ii. 1 for Ninus.

CHAP.

VIII. Auguſtine, De Civ. Dei, xvi. 17.
Vincentius, De Morali Inſtitutione Principum. See note. This paſſage occurs alſo in the Speculum Hiſtoriale, i. 101.
Auguſtine, De Civ. Dei, xvi. 3.

IX. Auguſtine, De Civ. Dei, xv. 20.
Joſephus, Antiq. Jud. i. 3.
Aquinas, De Reg. Prin. i. 12.
Canon Law, Decretum, pars i. diſt. vii. 1.
Diſt. viii. cap. 3. *Mala conſuetudo.*

XIV. "Cum dicat Scriptura, maledictus," &c. See Note.

XV. "Philoſophus (Ariſtotle) et Auguſtinus." See Note.
Boethius, De Conſolatione Philoſophiæ, lib. iii. proſa iv.

XVI. Aquinas, De Reg. Prin. ii. 9.
Ægidius Romanus, De Regimine Principum. See Note.
Aquinas, De Reg. Prin. iii. 12, 20; and ii. 8, and iv. 1.

XVII. Aquinas, De Reg. Prin. i. 12.

XVIII. Aquinas, De Reg. Prin. i. 1.
Ariſtotle, Phyſics, i. 12.
Civil Law, Digeſts, ff. lib. i. tit. 1. De Juſtitiâ et Jure.
Vincentius, De Morali Principum Inſtitutione. See Note. The reference is to St. Gregory the Great, Morals on Job, lib. xvii. (Job xxv.)

XIX. Canon Law, Decretum, pars i. diſt. v. cap. 1, in the gloſs.
Auguſtine, De Civ. Dei, xv. 3.

XX. Civil Law, Inſtitutes, lib. i. tit. 2. De Jure Naturali gentium et Civili, § 11.

XXII. Aquinas, De Reg. Prin. ii. 9.

XXIV. Ægidius Romanus, De Reg. Prin. lib. iii. pars 2, cap. 23, ed. Rom. 1482.
Ariſtotle, Ethics (Nichomachean), v. x. 8.
Ariſtotle, "Melius regitur regnum optimo rege quàm optimâ lege," a ſummary drawn from the argument in the 3rd Book of the Politics. This is one of the "Auctoritates."

XXV. Aquinas, De Reg. Prin. iii. 11.

XXVI. Boethius, De Cons. Phil. iii. metrum, 5, iv. proſa 2.
"Metriſta quidam."
"Omnes res geſtas faciunt duo, velle, poteſtas. Si diſtinguuntur disjuncta nil operantur."
Boethius, De Cons. Phil. iii. proſa 10.
Aquinas, De Reg. Prin. i. 3, 5, 6.

XXVII. Boethius, De Cons. Phil. iii. proſa v.
Jerome, "in Gloſa ſuper xix. cap. ii. Libri Regum." 2 Samuel xix.

XXVIII. Aquinas, De Reg. Prin. i. 1.

XXIX. Auguſtine, De Civ. Dei, xix. 13.

XXXI. Cicero, De Officiis, i. 2.
Canon Law, Decretum, pars i. diſt. viii. 4, De Veritate, and cap. 7, *Fruſtra.*
Januenſis (Joannes Balbus), Catholicon, ed. Rouen, 1511. The reference will be found under the article *Diffinitio.*

CHAP.

XXXIV. Aquinas, in Primâ Summæ, quæſt. xcvi. art. 4.
Aquinas, De Reg. Prin. iii. 9.
Auguſtine, De Civ. Dei, xix. 14 and 13.
Ariſtotle, "in Primo Politicorum." Taken not from the text of Ariſtotle, but from the Collection of Auctoritates Ariſtotelis, and is an expanſion of the paſſage in the Politics, i. 2—"το μεν γαρ δυνάμενον τῇ διανοια προορᾶν ἀρχον φυσει και δεσποτον φύσει, τὸ δε δυνάμενον τῳ σωματι ταυτα ποιειν ἀρχομενον και φυσει δουλον."
Auguſtine, De Civ. Dei, xix. 15.
St. John Chryſoſtom, "in quodam ſermone." The paſſage is taken, though not with verbal accuracy, from Chryſoſtom's ſermon, "Quomodo primus homo omni prælatus ſit creaturæ," which is placed immediately after the Homilies on Geneſis in the folio ed. Baſiliæ, 1558, vol. i. p. 536.

XXXV. Anſelm. This definition of juſtice occurs in ſeveral of St. Anſelm's works, in the "De Conceptû Virginis et Originali Peccato," chaps. 3 and 5; in the "De Concordiâ præſcientiæ Dei cum libero arbitrio," quæſt. 1 and 6; in the "Dialogus de Veritate," c. 12; but moſt conſpicuouſly in the laſt.
Auguſtine, De Civ. Dei, xiv. 11.

XXXVI. Civil Law, Digeſts, lib. i. tit. 1. De juſtitiâ et jure, lex 1.
Auguſtine, De Trinitate, lib. ix. "Mens humana notitiam gignit," is a ſummary of the argument in the ninth book of the De Trinitate.

XXXVII. "Sanctus Auguſtinus in libro de Dignitate Conditionis Humanæ." See Note.
Ariſtotle, De Cœlo et Mundo, i. 1.
Dionyſius Areopagita, De Divinis Nominibus, chap. ii.
Auguſtine, "in ſole ſunt ſubſtantia ejus," &c. See Note.

XXXVIII. Aquinas, De Reg. Prin. iii. 9.

XXXIX. Auguſtine, De Civ. Dei, xiv. 6.

XL. "Magiſter Sententiarum," Peter Lombard. "Super I^ma ad Corinth. xi." Commentary on 1 Cor. xi. 7, ed. 1535, fol. xcv.

XLI. Dionyſius, De Divinis Nominibus (ed. 1634), p. 531.

XLII. Iſidore, Etymologies. The reference is probably to lib. v. c. 2, "Omnes leges aut divinæ ſunt aut humanæ. Divinæ naturâ, humanæ moribus conſtant," included in the Digeſts, i. 1.
Auguſtine, Contra Fauſtum Manichæum, xxii. 27.
Boethius, De Cons. Phil. iv. proſa 6.
Damaſcenus, St. John Damaſcene. De Fide Orthodoxâ, ii. 29, probably quoted from ſome comment on the Sentences. Lib. i. diſt. 35-38.
Aquinas, in Prim. Sec. Quæſt. xci. art. 2.
Boethius, De Cons. Phil. iv. proſa x.

XLIII. Canon Law, Decretum, pars i. diſt. viii. c. 2. *Quæ contra mores.*
Boethius, De Cons. Phil. iv. proſa vi.

XLIV. Aquinas, De Reg. Prin. i. 14, 15.
Ariſtotle, Politics, lib. vii.

CHAP.

XLIV. Boethius, De Cons. Phil. iii. proſa ii.
Aquinas, De Reg. Prin. i. 8.
Ariſtotle, Metaphyſics, iii. From the Auctoritates.
Boethius, De Cons. Phil. as above.
Aquinas, De Reg. Prin. i. 8, 15, and iii. 3.

XLV. Aquinas, De Reg. Prin. as above.
Ariſtotle, "agens per intellectum propter finem operatur."

XLVI. Aquinas, De Reg. Prin. i. 14.
Ariſtotle, Ethics, i. 1. "ἐν ἁπάσαις (ταῖς τεχναῖς), τὰ τῶν ἀρχιτεκτονικῶν τέλη πάντων ἐστὶν αἱρετώτερα τῶν ὑπ' αὐτά· τούτων γὰρ χάριν κἀκεῖνα διώκεται," and "ἡ πολιτικὴ (being μάλιστα ἀρχιτεκτονική) . . . διατάσσει."

PART II.

IV. Auguſtine, De Civ. Dei, lib. xviii.
Joſephus, Antiquities. Both general references.
Aquinas, De Reg. Prin. iii. 11.

VII. Ariſtotle, Metaphyſics, i. 3.

VIII. "Mas occaſionatus." Ariſtotle, De Generatione Animalium, ii. 3. See Note.
Aquinas, De Reg. Prin. iv. 6.

IX. Ariſtotle, Politics, ii. 6.
Aquinas—as above.
Civil Law, "ff. De Regulis Juris, lege *Feminæ*."
Digeſts, lib. l. tit. xvii. lex 2.
Canon Law, Decretum, pars ii. cauſa xxxiii. quæſt. v. cap. 17. *Mulierem.*
Ariſtotle, De Cœlo et Mundo, lib. ii. "Natura in omnibus opera turoptimè," and "Auctoritas."
Aquinas, De Reg. Prin. i. 1, &c.
Ariſtotle, Politics, lib. ii. "Conſilium mulierum invalidum." "τὸ δὲ θῆλυ ἔχει μὲν τὸ βουλευτικὸν ἀλλ' ἄκυρον." Ariſt. Pol. ii. 13.
"Ars imitatur naturam." Ariſt. Phys. ii. 2.

XVIII. Ariſtotle, "Homo qui animal politicum eſt et ſociale," &c., compoſed probably of Ariſtotle's words—"ὅτι φύσει ἄνθρωπος πολιτικὸν ζῷον." Pol. i. 2, and "τὸ γὰρ ἄρχειν καὶ ἄρχεσθαι οὐ μόνον τῶν ἀναγκαίων," &c. Pol. ii. 4.
Aquinas, Prima Pars Summæ Theologiæ, quæſt. xcvi. art. 4.
De Reg. Prin. iii. 9.
Peter Lombard, Comment on 1 Cor. xi. 8, 9, ed. 1535, folio xcvi.
Ariſtotle, Metaphyſics, xi. 2, "ubi tractat de generatione quæ fit ex ente in potentiâ."—"ἐπεὶ δὲ διττὸν τὸ ὄν, μεταβάλλει πᾶν ἐκ τοῦ δυνάμει ὄντος εἰς τὸ ἐνεργείᾳ ὄν."

CHAP.

XVIII. Hugo De Sancto Victore, Eruditio Theologica, De Sacramentis, lib. i pars vi. cap. 35, ed. Venice, 1588.

Canon Law, Decretum, pars ii. causa xxxiii. quæst. 5, cap. 13, *Hæc imago*

Vincentius Bellovacensis, Speculum Historiale, i. 41.

XIX. Hugo de Sancto Victore, De Sacramentis, i. vi. 34.

Canon Law—as above.

Aristotle, "Semen viri," &c. De generatione Animalium, i. 22, and ii. 2, and Metaphysics vii. iv. 4, 5.

XX. "Sanctus Augustinus in libro lxxxiii. quæstionum," De Ideis, "restat ut omnia ratione sint condita; nec eâdem ratione Homo quâ Equus." De Diversis Quæstionibus, quæst. xlvi.

XXII. Augustine De Civ. Dei, xviii. 2.

"Turpis est pars quæ non convenit suo toto," found in Aquinas, De Reg. Prin. i. 3, probably from the Metaphysics.

Diodorus Siculus, ii. 46.

XXIII. Auctor De Causis. See Note.

XXIX. Canon Law, Decretum, pars i. dist. v. i.

Isidore, the law of nature a *Jus Divinum*. The reference is taken from the Canon Law, Decr. i. dist. i. can. i., where it is referred to Isidore, Etymolog. v. 2, and is there to be found, though not *totidem verbis*.

XXX. Boethius, De Cons. Phil. iv. prosa ii.

XXXI. Civil Law, ff. (Digests.) De Regulis Juris, lib. l. tit. xvii. lex 120.

Same title, lex i. *Regula est*, &c.

XXXII. Institutes, lib. ii. tit. xix. De Heredum Qualitate et Differentiâ. *Sui autem.*

XXXV. Leonardus Brunus Aretinus, In Libros Morales Aristotelis Yſagogicum. "Hinc igitur vides tot esse fines quot sunt actus, aliosque subesse aliis; finem autem appello cujus gratiâ quid agimus." Edited by John de Westphalia, sine loco et anno.

XXXVI. Aristotle, Metaphysics, "a primo principio dependet cœlum et tota natura." See xi. chaps. 4 and 5, not verbally correct (?).

Homer, Iliad, Θ, 18, 19.

Macrobius super Somnium Scipionis, lib. i. cap. xiv. § 15. The passage of the Somnium is in chap. 4 of the old editions, but in lib. vi. c. 17 of the De Republicâ, ed. Orellius.

XLII. Aquinas, Prim. Summæ, quæst. xcvi. art. 4.

Aquinas, De Regimine Principum, iii. 9.

Augustine, De Civ. Dei, xix. 14, 16.

Aristotle, "Semper esse aliquod primum et dirigens," an "Auctoritas," from the 1st Book of the Politics, quoted by Aquinas in Prim. Summæ xcvi. 4, above.

Aquinas, De Reg. Prin. ii. 9, "regimen politicum præponitur regali."

Augustine, De Civ. Dei, xiv. 10.

XLV. Augustine, De Civ. Dei, xix. 15.

Aquinas. (See above at chap. xlii.)

CHAP.

XLV. Ariſtotle, Politics, i. 2. See Part i. ch. xxxiv.
Auguſtine, De Civ. Dei, xix. 15, as above.
Aquinas, De Reg. Prin. ii. 9.

XLVI. Auguſtine, De Civ. Dei, xviii. 21.
Aquinas, De Reg. Prin. i. 1.
Ariſtotle, Politics, iii. 7.
Auguſtine, De Civ. Dei, xv. 8.
Canon Law, Decretum, pars ii. cauſa xxxiii. quæſt. 5. *Hæc imago.*

XLVIII. Civil Law, Authenticæ or Novellæ (Novels), Collatio ix. tit. i. cap. 5, De legitimâ tutelâ, &c. The true reference is Novella Conſtit. cxviii. De Heredibus ab inteſtato, &c. cap. 5.

XLIX. Auguſtine, De Civ. Dei, xix. 21.

L. Canon Law, Decr. pars i. diſt. i. cap. *Omnes leges.*

LII. Civil Law, Codex, lib. xii. tit. i. lex i. De Dignitatibus, "et gloſa ordinaria ibidem."
Digeſts, (ff.) lib. i. tit. 5. De ſtatû Hominum, lex 19. *Cum legitimæ.*
Inſtitutes, lib. i. tit. 15, De legitimâ agnatorum tutelâ.
Digeſts, (ff.), lib. i. tit. 8, De Senatoribus, lex 10. *Liberos.*
Codex, lib. x. tit. 31, De Decurionibus, &c., lex 36. *Exemplo* or *Exemplum.*

LIII. Digeſts, (ff.) lib. v. tit. 1, De Judiciis, lex 11. *Cum Prætor.*
Codex, lib. ii. tit. 56. De Arbitris. (l. fi. = lex finalis.)
Digeſts, (ff.), lib. l. tit. 17. De Regulis Juris, lex 2. *Feminæ.*
Alſo, tit. 4, De Muneribus et Honoribus. Leges 3, *Et qui originem*, and 14, *Honor.*
Codex, lib. x. tit. 40, De Honoribus et Muneribus non continuandis, gloſſa ordinaria.
Digeſts, (ff.), lib. i. tit. 9. De Senatoribus, lex 8. *Feminæ.*
"Qui profeſſione," &c. A wrong reference to the Codex. The right one is lib. x. tit. 39. De Incolis, law 9.
Authenticæ, Coll. iv., De Conſulibus. *Si vero.* See Note.
Codex, lib. x. tit. 62, De Mulieribus, in quo loco, &c. ("lege unicâ," there being but one law under the title), and the gloſs at the word *honores.*
Codex, lib. v. tit. 4, De Nuptiis, lex 23, *Imperialis*, and the gloſs at the word *dignitate.*
Codex, lib. xii. tit. viii. Ut dignitatum ordo ſervetur, lex 2.
Digeſts, (ff.), lib. ii. tit. 1, De Juriſdictione, lex 1, and the gloſs.
Same title, lex 3. *Imperium.*
Digeſts, (ff.), lib. i. tit. iv. De Conſtitutionibus Principum, lex i.
Codex, lib. i. tit. xiv. De Legibus et Conſtitutionibus Principum et Edictis, lex finalis.
Digeſts, (ff.), lib. xlviii. tit. 2, De Accuſationibus et Inſcriptionibus, lex 8. *Qui accuſare*, and the gloſs.

LIV. Digeſts, (ff.), lib. i. tit. i., De Juſticia et Jure, lex 6.

LV. Canon Law, Decr. pars ii. cauſa xxxiii. quæſt. v. c. 17.

LVII. Auguſtine, De Civ. Dei, ii. 1.
Dionyſius Cato, "moralis Catonis verſiculus."

CHAP.

LVII. "Virtutem primam eſſe puta compeſcere linguam; Proximus ille Deo eſt, qui ſcit ratione tacere," lib. i. diſtich. 3.

LIX. Ariſtotle, De Cœlo et Mundo, iii. 2, Metaphyſics, xi. x. 2. "καὶ γὰρ ἡ τῆ τάξει τὸ εὖ καὶ ὁ στρατηγός."

Auguſtine, De Civ. Dei, xv. 22 and xix. 13.

LXII. Canon Law, Decr. pars ii. cauſa xxxiii. quæſt. 5, *Mulierem* (cf. chap. ix.)

LXIII. St. Gregory's Third Letter to Auguſtine. See Bede, Hiſt. Eccl. Gentis Anglorum, i. 27.

Peter Lombard, lib. ii. diſt. 22, G.

Auguſtine, Comment on John i. 14 (Opp. Aug. ed. Bened. vol. iii. part 2, p. 393.)

Peter Lombard, lib. ii. diſt. 23 G, and Comment on 1 Cor. xi. 8, 9. Ed. 1535, fol. xcvi.

NOTES AND ILLUSTRATIONS.

PART I.

CHAP. I. *Philoſopho.*] "Sicut enim *Urbs* Romam, Maronem *Poeta* exprimit, ſic et *Philoſophi* nomen circa Ariſtotelem, utentium placito, contractum eſt." John of Saliſbury (1110-1180). *Polycraticus*, vii. 6.

CHAP. I. *Dicente Philoſopho*, "*omnia amamus, ſed principari majus.*"] This has not been identified in Ariſtotle, but there are paſſages like it, to which Forteſcue may allude; as Rhetoric, i. 38 τὸ δ' ἄρχειν ἥδιστον, and Politics, vii. 14. § 17; ὥσπερ οἱ πλεῖστοι τῶν ἀνθρώπων ζητοῦσι τῶν πολλῶν δεσπότειν. It is not among the *Auctoritates*.

CHAP. I. *Tot bella civilia, toti mundo pervulgata.*] Upon this Profeſſor Stubbs ſends me the following remarks: "As to the wars of ſucceſſion to which your anceſtor refers, I think he has gone a little beyond the record. For I can remember no great war in Europe before his days which originated in a queſtion of ſucceſſion ſuch as he was at work upon, ſave the Engliſh wars in France and thoſe of the Roſes. The war between Stephen and Matilda is excluded by his words. Certainly in Germany and the North there was no ſuch war of ſucceſſion. To look for precedents in Spain and Italy would ſeem far-fetched; and in Spain, certainly, the rights of women were freely eſtabliſhed. In Sicily, there was the war between Tancred and Henry VI., 1189—1192, into which the rights of the heireſs entered, but the claim there was embarraſſed by queſtions of legitimacy and alſo of uſurpation. Any real precedents, I think, would have to be ſought among the hiſtories of the French dukes and counts, who varied in their treatment of fiefs, male and female, and in the recognition of *repreſentation*. And from them, perhaps, we might proceed to the petty quarrels in Northern Italy, about Milan, &c., which were going on in Sir John Forteſcue's own time. But none of them could be called great wars, and I am inclined to think that his words are a raſh generalization. I feel convinced that the ſtatement is a rhetorical one."

CHAP. IV. *Canones. Dis.* i.] The Corpus Juris Canonici compriſes five Codices: the firſt being the Decretum Gratiani, which is divided into three parts. Forteſcue refers to the Decretum only, and to the two firſt of its parts. The Firſt Part is divided into *Diſtinctiones*, and *Capita* or *Canones*; the Second, into *Cauſæ*, *Quæſtiones*, and *Capita*. For the eſtabliſhed mode of quotation from the Decretum, ſee Scavini's Theologia Moralis, Tract. Sec. De Legibus, cap. iv. art. i. Forteſcue quotes from the Corpus Gloſſis Diverſorum Illuſtratum, publiſhed by order of Pope Gregory XIII.

CHAP. V. *Ut Dicit Sanctus Thomas in Primâ Summæ.*] Forteſcue makes ſeveral references to the Summa Theologica of Thomas Aquinas. (Born 1227, died 1274). It is divided into three parts, each of

theſe into *Quæſtiones*, and theſe again into *Articuli*. The ſecond part contains two ſubdiviſions, under the titles of *Prima* and *Secunda Secundæ*.

CHAP. V. *Dicente Varrone.*] M. Terentius Varro, (born B.C. 116, died B.C. 28,) whoſe vaſt and varied erudition earned for him the title of the "moſt learned of the Romans," author of the De Re Ruſticâ, De Linguâ Latinâ, the Antiquitates Rerum Humanarum, and Rerum Divinarum, (from which laſt Auguſtine drew very largely in his City of God, and which is one of our ſevereſt loſſes in the field of claſſical literature) beſides a large number of other works. In this, as in other caſes, a reference, however trifling in itſelf, may be worth notice, as ſhowing the nature and extent of Forteſcue's reading. But there is no neceſſity to ſuppoſe that he was acquainted with the writings of Varro, for the reaſon that the *dictum* which he quotes is to be found in the *Speculum Hiſtoriale* of Vincent of Beauvais, who has there inſerted a collection of *Sententiæ*, which he attributes to Varro.

CHAP. VII. *Nembroth robuſtus venator . . . id eſt oppreſſor.*] Compare Harrington's Grounds and Reaſons of Monarchy. "As for thoſe kings that intrude by force, they cannot certainly have the forehead to infer any right, they being but, as the pirate ſaid to Alexander, public and more magnificent robbers. Certainly theſe are the Nimrods, the great hunters, God's ſcourges," &c. Alſo Algernon Sydney's Diſcourſe concerning Government, chap. i. ſect. viii., and iii. ſect. xxxi. Forteſcue brings in "Nembroth" in the De Laudibus (chap. xii.); and he ſurvived as a topic for writers on Government down to the ſeventeenth century.

CHAP. VII. *Diſculos.*] In the Laud MS. *improbos*, introduced no doubt on account of the obſcurity of the word uſed by the writer. But "dyſculus" is to be found, as a tranſlation of σκόλιος in the Vulgate of 1 Peter ii. 18, "non tantum bonis et modeſtis ſed etiam dyſcolis."

CHAP. VII. *Quod dicit Sanctus Thomas.*] The firſt reference to the treatiſe of Aquinas, called *Ad Regem Cypri de Regimine Principum*, upon which, more than upon any other authority, Forteſcue relies in the firſt part of the De Naturâ. The King of Cyprus was either Hugo II. or Hugo III., of the Houſe of Luſignan. The treatiſe is curious and readable, baſed to a great degree on the Politics of Ariſtotle.

CHAP. VII. *Ariſtoteles plures numerans tyrannos.*] "καίτοι πασῶν ὀλιγοχρονιώτεραι τῶν πολιτειῶν εἰσὶν ὀλιγαρχία καὶ τυραννίς." Politics v. 12.

CHAP. VIII. *Vincentius.*] Vincent of Beauvais, a learned Dominican, of the 13th century. (Died A.D. 1264, or 1256.) He was reader to St. Louis, under whoſe auſpices he compoſed his great work, the Speculum Majus, the Encyclopedia of that age. It was divided into the Speculum Naturale, Morale, Doctrinale (ſcientific), and Hiſtoriale, and was firſt printed at Straſburg in 1473. Hallam gives an account of this vaſt compilation, ſo characteriſtic of the period which produced it. (Literature of Europe, Part I. chap. 2, § 38.) But it was by no means the only work of Vincent. "Non ſolùm," to uſe the words of Echard and Quétif (Scriptores Ordinis Predicatorum), "tria Specula profata Vincentius, ſed et, quo erat laboris vigore indefeſſo, plures tractatus eodem methodo, id eſt, totos ex SS. Patrum auctoritatibus ſibi invicem connexis conſtantes, compoſuit, quorum aliqui typis prodierunt, alii delitescunt adhuc in bibliothecis MSS." Whether the treatiſe *De Morali Inſtitutione Principum*, quoted by Forteſcue, comes under the firſt or ſecond of theſe heads, I have not been able to aſcertain with certainty. At firſt I took it to be identical with a ſmall work of Vincent's, of which the title varies in different MSS., but which is commonly called *De Eruditione Filiorum Regalium*. This, however, is not the caſe. The latter will be found in a ſmall volume of Opuſcula (in the Britiſh Muſeum),

printed by John Amerbach, at Bâle, in the year 1481, where it forms the fourth in a collection of five treatiſes. But the *De Morali Principis Inſtitutione* is deſcribed by Echard and Quétif, and in the Hiſtoire littéraire de la France, as exiſting in MS. only. "Vincentii tractatus nondum typis excuſi quinque mihi veniunt recenſendi," ſays Echard, after deſcribing the five treatiſes printed in the volume of Opuſcula; and having given an extract from the Preface of the Tractatus de Morali Principis Inſtitutione, one of the five unprinted, he adds: "Hoc agente cariſſimo ſodali noſtro Michaele Lequien accepi ex Angliâ." In the ſame way the Hiſtoire littéraire (tom. xviii. 4to. Paris, 1835) ſpeaks of "l'inſtitution ou inſtruction morale du prince" as "le ſujet d'un cinquième traité qui ſe conſerve manuſcrit en Angleterre" (p. 463), which it carefully diſtinguiſhes from "le volume publié en 1481, par J. d'Amerbach, *De Eruditione ſeu modo Inſtruendorum Filiorum Regalium*," giving an intereſting account of each work (p. 466). The MS. of which Echard's "ſodalis," Father Le Quien, ſent him a deſcription and an extract, is probably one now in the Library of Merton College, Oxford, "a beautiful MS. in folio containing twenty-two leaves, thirteenth century hand," ſays Profeſſor Stubbs, who writes thus upon the point: "The two paſſages are found in the Merton MS. of Vincent of Beauvais de Morali Principis Inſtitutione. The firſt, about Belus, Nembroth, and Ninus, in the ſecond chapter of the work, the title of which is 'De Primâ Regis vel Principis Inſtitutione.' The ſecond is in chapter vii.: 'Quod omnia regna terrena diſponuntur nutu divinæ providentiæ.' I copy it in full: 'Hos quidem duos principes Græcorum ſcilicet atque Perſarum dicit Jeronimus angelos malos fuiſſe, qui regnis illis appoſiti ſunt ad excidium. Dicit enim et Origenes ſuper Luc. Omel. xii. 'Quo modo,' inquit, 'per ſingulos homines boni ſunt Angeli, ſic opinor etiam in ſingulis diſpares eſſe provinciis, ut ſunt boni et mali. Laborabat itaque Perſarum angelus ne liberarentur Hebræi a dominio Perſarum, tum quia delectabatur afflictionibus eorum, tum etiam ut Perſæ, affligentes illos diutiùs, peccarent graviùs. Laborabat etiam angelus Græcorum ut Perſæ ſimul et captivitas Hebreorum cum eis tranſirent in dominium Græcorum.' At vero Gregorius illos fuiſſe vult Angelos bonos, qui ſatagebant ne tam cito Hebræi liberarentur, ut ſi quid erat purgandum in eis purgaretur et ad ignem tribulationis decoqueretur.' There is very little in Echard and Quétif, i. 236, about the Eruditio Filiorum Regalium, and they ſimply give the Prologue to the De Morali Principis Inſtitutione. On looking at the two I find that—1. De Eruditione Filiorum Regalium, is addreſſed to Margaret Queen of France, and is chiefly educational, good for girls as well as boys, contains moral and diſciplinary leſſons, but ſteers clear of politics. It was printed at Baſle, in 1481, by John Amerbach, and is in the Bodleian, bound up with Ægidius Romanus de Regimine Principum, containing fifty-one chapters. 2. The De Morali Principis Inſtitutione, or Inſtructione, is ſtill in MS. It is addreſſed to Lewis King of France and Theobald of Champagne, and is mainly on political principles, for grown-up people, and illuſtrated largely with hiſtorical and theological examples. It contains twenty-eight chapters, and is found in the MS. Merton 111 (cxi.)." So much for the MS. But Brunet mentions a volume entitled "*Libri III. de Morali Principis Inſtitutione, de Nobilium Puerorum Inſtitutione, et de Conſolationibus ſpecialibus de Morte Filii*" ("ſans lieu ni date," but like the Lactantius printed at Roſtock in 1476); from which it would appear that the firſt of theſe *Libri III.* was identical with the Merton MS. (See alſo Panzer, Annales Typographici, ii. 558, and iv. 18.) The volume thus deſcribed by two ſuch high authorities, although not in the Britiſh Muſeum, the Bodleian, or at Cambridge, and although not found, upon inquiry, in the Bibliothèque Impériale, or the Bibliothèque Mazarine, at Paris, probably lies hidden among the uncatalogued ſtores of the French libraries.

CHAP. XIV. *Cum dicat Scriptura, maledictus qui partem ſuam facit deteriorem.*] "I conjecture this

to be a Rabbinical generalization of Naboth's reply to Ahab," 1 Kings xxi. 3: "The Lord forbid it me, that I ſhould give the inheritance of my fathers unto thee." (Dr. Ullathorne.) The words in the text are not to be found in the Vulgate.

CHAP. XV. "*Sola enim virtus eſt*," (*ut ait Philoſophus et Auguſtinus*) "*quâ non licet male uti.*"] Upon this I am favoured with the following note by Biſhop Ullathorne: "When writers of the period quote St. Auguſtine and the Philoſopher jointly, we may conclude that they have been reading St. Thomas Aquinas. Accordingly, I find in St. Thomas on the Maſter of the Sentences (Peter Lombard), *In 2^m librum Sententiarum*, Diſt. xxxvii. Quæſt. 1, in the text of the Sentences, the two following quotations—from St. Auguſtine, lib. 10, *Retractationum*, 'Virtutibus nemo malè utitur,' and from his *De Libero Arbitrio*, lib. ii. c. 18, 'Virtus eſt bona qualitas mentis, quâ rectè vivitur, et quâ nullus malè utitur.' This laſt is evidently Forteſcue's ſentence. On the ſame xxxviith Diſtinction of the 2nd Book of the Sentences, Article 2, St. Thomas treats the point, and quotes Ariſtotle: 'Eſt enim virtus, ut Philoſophus in Ethic. dicit, quâ quis bonus eſt, et quæ opus bonum reddit,' a definition which Forteſcue ſeems to conſider identical with that of St. Auguſtine, although St. Thomas, by one of his ſubtle diſtinctions, concludes otherwiſe. I ſubjoin the paſſage in the Ethics, II. vi.: πᾶσα ἀρετή, οὐ ἀν ᾖ ἀρετή, αὐτό τε εὖ ἕξον ἀποτελει, καὶ τὸ ἔργον αὐτοῦ εὖ ἀπεδώσει; and again, ἡ τοῦ ἀνθρώπου ἕξις ἡ εἰη ἕξις ἀφ' ἧ, ἀγαθὸς ἀνθρωπος γινεται, καὶ ἀφ' ἧς εὖ τὸ ἑαυτοῦ ἔργον ἀποδώσει. But the point of our author's ſaying is due to Auguſtine, and not 'the Philoſopher.'"

CHAP. XV. *Boetius.*] This once famous and favourite writer (born about 470, died 524) is often quoted by Forteſcue. He left behind him various tranſlations of, and Commentaries upon Ariſtotle, which formed part of a noble undertaking which he had deſigned, that of reſtoring to the Latin world the beſt productions of Greek Philoſophy. (Hampden's Bampton Lectures, p. 67.) But the work which made his name for many centuries a houſehold word throughout Europe was the Conſolation of Philoſophy, "a golden volume," ſays Gibbon, "not unworthy of the leiſure of Plato or Tully." "In the total ignorance of Greek writers, which prevailed from the ſixth to the fourteenth century, he was looked upon as the head and type of all philoſophers, as Auguſtine was of all theology, and Virgil of all literature, and hence the tendency throughout the middle ages to inveſt him with a diſtinctly Chriſtian and almoſt miraculous character." Whether he was a Chriſtian by profeſſion, or a ſtrongly religious Theiſt, deeply affected by the influence of Chriſtianity, it is impoſſible to ſay. And the middle poſition which he thus occupied by character and belief, he alſo occupies in the hiſtory and literature of the world. Being the laſt Roman of any note who underſtood the language, and ſtudied the literature of Greece, and living on the boundary of the ancient and modern world, he is one of the moſt important links between the two. After the introduction of the works of Ariſtotle into Europe, in the 13th century, his fame gradually died away. (Smith's Dict. of Greek and Roman Biog.)

CHAP. XVI. *O Samuel.*] Compare Milton on the ſame topic, in the Defence of the People of England, ch. ii. "You ſay, that when Samuel would deter the people from chooſing a king, he propounded to them this right of kings. But whence had Samuel it? Had he it from the written law of God? That cannot be. We have obſerved already, that the Scriptures afford us a quite other ſcheme of ſovereignty. Had Samuel it then immediately from God himſelf by revelation? That is not likely neither; for God diſlikes it, diſcommends it, finds fault with it, ſo that Samuel does not expound to the people any right of kings appointed by God; but a corrupt and depraved manner of governing, taken up by the pride and ambition of princes. He tells not the people what their kings ought to do

but what they would do. He told them the manner of their king; . . . . that manner was wicked, and odious, and tyrannical; it was no right, but great wrong.'' Compare alſo the following paſſages from Algernon Sydney's Diſcourſe concerning Government: "The government inſtituted by God over the Iſraelites was ariſtocratical. . . . . I may ſafely ſay, the Hebrew kings were not inſtituted by God, but given as a puniſhment of their ſin, who deſpiſed the government that He had inſtituted." (Chap. II. ſect. ix.) "Samuel did not deſcribe to the Iſraelites the glory of a free monarchy, but the evils the people ſhould ſuffer, that he might divert them from deſiring a king." (Chap. II. ſect. iii.) "When the Iſraelites aſked for ſuch a king as the nations about them had, they aſked for a tyrant, though they did not call him ſo." (Chap. II. ſect. vii.)

CHAP. XVI. *Dominium regale et dominium politicum.*] With this and the following chapters compare the De Laudibus, Chap. ix. xii. &c., where the author quotes the De Reg. Principum, and refers to this treatiſe as the "Opuſculum quod Tui contemplatione de Naturâ Legis Naturæ exaravi." Compare alſo the three firſt chapters of Forteſcue's Abſolute and Limited Monarchy, where the ſame diſcuſſion about *Dominium Regale* and *Dominium Politicum et Regale* is baſed, as here, upon Aquinas's Treatiſe. I do not, however, diſcover Forteſcue's "Lordſhip Royal and Politike," (the "tertium dominium non minus his dignitate et laude") in the De Regimine Principum. There is, indeed, in the 3rd Book, a deſcription of the Imperial Government (Roman and Mediæval), as partly "royal" and partly "political;" but the queſtion of limited monarchy is not there raiſed. I may add that Book III. is not written by Aquinas, as it mentions (chap. xx.) the death of Rodolph of Hapſburg, which took place in 1292, Aquinas having died in 1274. (See Biog. Univ.) In the two firſt Books, Aquinas repeats Ariſtotle's diviſion of forms of government into Monarchy, Ariſtocracy, and *Politia* with their παρεκβάσεις, Tyranny, Oligarchy, and Democracy i. 1.) and (while admitting that "ſicut regimen Regis eſt optimum, ita regimen tyranni eſt peſſimum," and that "inter injuſta regimina tolerabilius eſt democratia, peſſimum vero tyrannis," i. 3.) comes to the concluſion, "magis eſſe expediens ſub uno Rege vivere quàm ſub regimine plurium." (I. 5.) Again, (ii. 9.) admitting that the "principatus regalis" is, or is liable to be, identical with the "principatus deſpoticus," he contends that the "regimen politicum" was beſt for the times of man's innocence, or even "apud ſapientes, et homines virtuoſos, ut fuerunt antiqui Romani," but that "in naturâ corruptâ regimen regale eſt fructuoſius." He does, indeed, lay down the neceſſity of taking precautions againſt the danger of the king turning into the tyrant; "laborandum eſt diligenti ſtudio ut ſic multitudini provideatur de Rege, ut non incidant in tyrannum;" (i. 6.) but what thoſe precautions ſhould be, he fails to ſuggeſt; except that he aſſerts the right of a people which has choſen a king to depoſe or put him to death, "ſi poteſtate regiâ tyrannicè abutatur," (chap. 6.) and proves it to be the king's intereſt, both for this world and the next, to govern well, promiſing him in that caſe "eminentem celeſtis beatitudinis gradum," (i. 9.) and, on the other hand, "maximum tormentum in pœnis, ſi declinat in tyrannidem." (i. 11.) Again, the writer of the 4th Book of the De Regimine (who is more favourable than Aquinas to the *regimen politicum*), lays down the eſſential diſtinction between the "principatus regni" and the "principatus politicus" in theſe words: "legibus aſtringuntur rectores politici, nec ultra poſſunt procedere in proſecutione juſtitiæ; quod de Regibus et aliis monarchis Principibus non convenit; quia in ipſorum mente ſunt leges reconditæ, prout casus occurrunt, et pro lege habetur quod Principi placet, ſicut jura gentium tradunt: ſed de rectoribus politicis non ſic reperitur, quia non audebant aliquam facere novitatem, præter legem conſcriptam," (IV. 1.) a limitation which he ſeems to think entirely inconſiſtent with the idea of a king. Forteſcue, therefore, while he

endeavours to ſupport his doctrines of Conſtitutional Monarchy by the authority of "Saynt Thomas," both in his Engliſh treatiſe (chap. i.) and in the De Laudibus (chap. 9), really derived them from his own liberal ſentiments, and the happy experience of his own country.

CHAP. XVI. *Ægidius Romanus,*] or Giles de Colonnâ, was a learned theologian and philoſophical writer of the latter part of the thirteenth century, ſtyled Doctor Fundatiſſimus. He ſtudied at Paris, under Thomas Aquinas, was appointed by Philippe le Hardi tutor to his ſon, afterwards Philippe le Bel, for whom he compoſed the treatiſe, quoted by Forteſcue, *De Regimine Principum*. He became Archbiſhop of Bourges in 1294, and died in 1316. His *Tractatus de Originali Peccato*, is ſaid by Watt (Bibl. Brit.) to have been the firſt work printed at the Oxford preſs, 1479. His De Reg. Prin. was firſt printed in 1473. As to the reference in this chapter to that treatiſe, ſee the Third Book, Part II. chap. 2. "Omnis ordinatio civitatis *politia* dici poteſt. Principatus tamen populi ſi rectus ſit, eo quod non habeat commune nomen, *politia* dicitur," &c. Compare the Polycraticus of John of Saliſbury, lib. iv., De Diff. Principis et Tyranni. "Eſt ergo hæc differentia ſola ve maxima, quòd hic legi obtemperat, et ejus arbitrio populum regit cujus ſe credit miniſtrum."

CHAP. XVI. *In regno Angliæ reges ſine Trium Statuum Regni illius conſenſu leges non condunt, nec ſubſidia imponunt ſubditis ſuis.*] Compare De Laudibus, chap. xviii. "Sed non ſic Angliæ Statuta oriri poſſunt, dum nedum Principis voluntate, ſed et totius Regni aſſenſû, ipſa conduntur. . . . . Prudentiâ etiam at ſapientiâ neceſſario ipſa eſſe referta putandum eſt, dum non unius aut centum ſolum conſiliorum virorum prudentiâ, ſed pluſquam trecentorum electorum hominum, quali numero olim Senatus Romanorum regebatur, ipſa edita ſunt."

CHAP. XVII. *Quæ tunc pœna ex promulgatione tantæ legis.*] Compare Milton's Defence of the People of England, chap. iii. 3. "If it be good for a nation to live under ſuch a power, why did not God of His own goodneſs inſtitute it? Did His wiſdom and love to His people fail? Or, if He himſelf had not ſet up the beſt government over them, could He be diſpleaſed with them for aſking it? . . . . or can they be ſaid to have ſinned, and rejected God, when they deſired nothing but the government which, by a perpetual ordinance, He had eſtabliſhed over all the nations of the world? Is not the law of nature a rule which He has given to things? and the law of man's nature, which is reaſon, an emanation of the Divine wiſdom, or ſome footſteps of Divine light remaining in us? Is it poſſible that this, which is from God, can be contrary to His will? and can He be offended with thoſe who deſire to live in a conformity to that law?"

CHAP. XVIII. *Ut ff. de Juſtitiâ et Jure.*] The firſt reference to the Corpus Juris Civilis. The ff., the old ſign uſed to expreſs the Pandects, is ſuppoſed to be the double Greek p, π π, miſtaken by the Latins for a double f. The De Juſtitiâ, &c. is the *Title*.

CHAP. XXIII. *Policia.* Chap. XXIV. *Epickaia.*] Theſe are wonderful derivations, and prove Forteſcue's Greek to have been the Greek of the period, or rather to have been non-exiſtent. He ſeems to ſuppoſe the *politia* of Aquinas (the πολιτεία of the Politics), to be *policia* in the original, and then derives it from "πολυς, pluralitas," and "ycon, adminiſtratio," a faint reflection, it is to be preſumed, of the Greek οἰκονομια ("Yconomia."—Part II. c. 8). The derivation of *epickaia* (ἐπιεικεία) from "*epi*, quod eſt *ſupra*, vel *laus*" (ἐπι-αινος), and "*kala*, quod eſt *laxa*, l mutato in i" (χαλαω), is equally ſtartling. There is a confuſion of the ſame kind as that between *politia* and *policia*, at Chap. xxvi. Part I., where the writer forms *democrachia* and *ariſtocrachia* on the model of *oligarchia*. The words τέλος and σκοπός, occur at Chap. xlv. Part I.; but there is no other attempt at Greek. The fact is, that Forteſcue ſtudied and wrote before, though only juſt before, the revival of claſſical learning in England, which followed at

a conſiderable interval that great awakening of Italy, which having begun before the year 1400, had continued with ever increaſing force throughout the firſt half of the fifteenth century; the age of Poggio, Leonardo Aretino, Filelfo, and Valla, of Nicolas V. and Coſmo de' Medici. "The Latin writers of the fifteenth century," ſays Hallam (Lit. of Europe, Part I. chap. ii. 26), "few in number, are ſtill more inſignificant in value; they poſſeſs ſcarce an ordinary knowledge of grammar; to ſay that they are full of barbariſms and perfectly inelegant, is hardly neceſſary,"—a verdict from the latter part of which, at all events, the critical hiſtorian would hardly have excepted our author. With reſpect to Greek, the revival of which language in Italy may be dated from the year 1395, in which Chryſoloras ſettled at Florence, its dawn in England cannot be placed earlier than 1491, when Grocyn returned from Italy, and began to teach it at Exeter College, Oxford, ſoon to be followed in the new ſtudies by Linacre, Colet, and the young Thomas More, whom Eraſmus, upon his firſt viſit to this country in 1497, found almoſt the only Engliſhman with any tincture of Greek.

CHAP. XXIV. *Ægidius Romanus.*] "Infirmitas naturæ ſupplicat pro veniâ. Ideo dicitur in Rethor. quòd *epyekes* eſt indulgere humanis. Dicitur enim eſſe epyekes qui eſt ſupra juſtum, ſivè ſupra juſtitiam." *De Regimine Principum*, lib. III. pars ii. c. 23.

CHAP. XXVI. *Rex politice imperans equalis potentiæ et libertatis eſt cum rege regaliter dominante.*] This doctrine, which, turning upon the ſenſe to be given to the words *power* and *liberty*, is either a truiſm or a paradox, is repeated and amplified by Forteſcue, with a reference to the preſent Treatiſe, in the *De Laudibus*, chaps. 10-15, evidently from an anxiety to reconcile the Prince of Wales, who might have learnt in his exile to envy the more deſpotic ſovereigns of the Continent, to that conſtitutional throne which he was deſtined never to aſcend. In the 9th and 13th chaps. are found thoſe remarkable paſſages, which Hallam has tranſlated and introduced into his State of Europe during the Middle Ages (Vol. ii. chap. viii. Part iii.), and which contain our author's view of the fundamental principle of the Engliſh Government, in words which are truly ſaid to have anticipated Sidney and Locke,—"ad tutelam legis ſubditorum ac eorum corporum et bonorum Rex hujuſmodi erectus eſt, et hanc poteſtatem *a populo effluxam* ipſe habet, quo ei non licet poteſtate aliâ ſuo populo dominari." Such a doctrine no ingenuity of interpretation would have diſcovered in the writings of the "Angelic Doctor," to whoſe authority he clung, with that reverence for the Schoolmen, which in his age was far from being extinct, and which belonged eſpecially to his own education and profeſſion, as it characterized his great ſucceſſor in the following century, Sir Edward Coke.

CHAP. XXVIII. *Tyrannus.*] "Tyrannus a *tyro* dicitur, quod eſt *fortis*, vel *anguſtia*, quaſi fortitudine anguſtians ſubditos ſuos." This ſurpriſing derivation is partly found in Aquinas:—"Talis rector tyrannus vocatur, nomine à fortitudine derivato."—*De Reg. Prin.* i. 1. The Catholicon of Januenſis repeats it: "Tyro Græcè Latinè dicitur fortis vel anguſtia;" and adds that the city of *Tyre* was ſo called "ab anguſtiâ loci." The fancied connection between *tyro* and *fortis* is to be found in the meaning of a "young ſoldier," and thence a "champion," which the former word bears: (Qui in arenam deſcendit, vel duello pugnat.—*Campio.*—Ducange); but the nonſenſe of the "anguſtia" is to me unfathomable, unleſs the ſound of θύρα (a door) could have conveyed the thought of narrowneſs or ſtraitneſs to the mind of the remarkable philologiſt, whoever he was, who deviſed the derivation. Other inſtances of our Author's etymologies, which were thoſe of his age, are *lex à ligando*, which he prefers to *legendo*, "quia ligant, et non ſemper leguntur," *lapidem* from *lædentem pedem*, *pigrum* from *pedibus ægrum*, *dominus* from *dans minas*, and *ſervus à ſervando*, "quia qui jure belli poterant occidi, dum ſervabantur dicebantur

ſervi," which is taken from Auguſtine, De Civitate Dei. Endleſs examples of theſe childiſh derivations are to be found in the mediæval writers, but I may give a highly characteriſtic one from the Canterbury Tales, where Chaucer thus explains the name of Cecilia :—

> "Firſt will I yow the name of Saint Cecilie
> Expoune, as man may in her ſtory ſe,
> It is to ſay on Engliſh, Heaven's lilie,
> For pure chaſteneſſe of virginitè.
> . . . . . .
> Or Cecile is to ſay, the way of blynde,
> For ſhe enſample was by way of teaching."

And ſo on, deriving the name from *cælum* and *lilium*, or *cæcus* and *leos*, or *cælum* and *leos*, "the heaven of people,"—"for *leos* people in Engliſch is to ſay." (The Second Nonne's Tale.)

CHAP. XXXI. *Januenſis.*] John Balbi, a Genoeſe monk of the thirteenth century, known as Johannes de Januâ, or Januenſis. Hallam ſays, "We may perhaps conſider as a witneſs to ſome degree of progreſſive learning in Italy at this time the Catholicon of Balbi. This book is chiefly now heard of, becauſe the firſt edition, printed by Gutenberg in 1460, is a book of uncommon rarity and price. It is, however, deſerving of ſome notice in the annals of literature. It conſiſts of a Latin grammar, followed by a dictionary, both perhaps ſuperior to what we ſhould expect from the general character of the times. They are at leaſt copious; the Catholicon is a volume of great bulk." Lit. of Europe, Part i. i. 90. He finiſhed his great work (which he calls "libellum hunc"), in 1286. Its popularity in the fifteenth century is indicated by the fact of its having been one of the very firſt books that iſſued from the Mayence preſs, after the Mazarine Bible. Hallam's Middle Ages, vol. ii. p. 530, 9th ed. See alſo Bayle, and Watt's Bibliotheca.

CHAP. XXXVI. *Sanctus Yſodorus in libro Ethimologiarum.*] St. Iſidore, Biſhop of Seville in 601, died 636. Hallam alludes to his Etymologies as one of thoſe "very indifferent compilations," which marked the rapid decline of learning after the death of Boethius, ſuperſeding the uſe of the great ancient writers. (Literature, Part ii. 3.)

CHAP. XXXVI. *Nam ſicut mens humana, ut dicit Auguſtinus IXo de Trinitate notitiam gignit*, &c.] This is a reference to the ninth (not the fifth) Book of the De Trinitate, and, although the exact words do not ſeem to occur, the ſubſtance is there *paſſim*. Here is the title of Book IX.: "Trinitatem in homine, qui imago Dei eſt, quamdam ineſſe, mentem, ſcilicet, et notitiam quæ ſe novit, et amorem qui ſe notitiamque ſuam diligit; atque hæc tria æqualia inter ſe, et unum oſtenduntur eſſe eſſentiâ."

CHAP. XXXVII. *Sanctus Auguſtinus de Dignitate Conditionis Humanæ.*] Dr. Ullathorne favours me with the following: "I have examined ſix editions of St. Auguſtine, including the two moſt authoritative ones—that of Louvain of 1574, and that of the Benedictines, alſo the lateſt and moſt complete, that of Migne. I have ſearched over the *ſpuria*, as well as the *authentica*, of thoſe editions; have examined the catalogue of his works drawn up by St. Auguſtine's diſciple, Poſſidius, who enumerates 1030 Tracts, Letters, and Sermons of this Father; have gone through the titles and headings both of the authentic and ſpurious *Queſtiones*, Letters, and Sermons; I have alſo gone over the two quartos dedicated to the criticiſm of St. Auguſtine's works in the great work of Louis Cellier, and have examined alſo the catalogue of genuine and not genuine works in the Bibliothèque of Elie Du Pin, but I have found no trace of ſuch a work as this De Dignitate Conditionis Humanæ. In the laborious Index to the works, the word *dignitas* occurs but once, the word *conditio* not even once. It

was not this Father's ſtyle, but more that of St. Leo, to talk of man's dignity; but St. Leo has nothing of this kind. It is my ſtrong impreſſion that the book quoted by Sir J. Forteſcue muſt have been one of thoſe countleſs works aſcribed in the middle ages to St. Auguſtine, even by their authors, becauſe their ſubſtance was drawn from his productions. There is no difficulty in pointing to the text from which the paſſage you quote is drawn. In ſubſtance, but not in words, it is amplified in the 10th and 11th Books of St. Auguſtine's Treatiſe, De Trinitate, whilſt it is beautifully ſummed up in the 15th Book of the ſame Treatiſe. But to comprehend the paſſage, it is neceſſary to bear in mind the peculiar ſenſe attached by St. Auguſtine and the Theologians to the word *memoria*. It is not the mere faculty of reminiſcence they contemplate, but that primal faculty of the ſoul, fontal to all the reſt, in which are ſtored our primary intuitions and all our acquired ideas, which are there latent, until by proceſs of thinking the object or word of our active intelligence is generated from it, and the two—memory and intellect—conſpiring, their united influence produces affection or will, which is alſo the copula of the two. But theſe three terms in the unity of one ſoul are the created reflection of the uncreated Trinity; yet only when exerciſing internal contemplation does this become viſible. Such is the ſenſe of St. Auguſtine, ſummed up very briefly in the paſſage quoted by your anceſtor. I alſo examined the catalogue of the Bodleian Library, to ſee if amongſt the ſeparate works of St. Auguſtine preſerved in it, there was any work bearing this title, but in vain. I may add that I took a curſory look over the thirty-ſeven folios of the Bibliotheca Maxima Patrum, thinking it might be there under the name of ſome other writer, but this was alſo ſo far in vain."

CHAP. XXXVII. *Dionyſius in Libro de Divinis Nominibus.*] Dionyſius Areopagita, once ſuppoſed to be the Dionyſius of the Acts, and to have become firſt Biſhop of Athens, and finally a martyr. There exiſt under his name a number of works of a myſtico-Chriſtian nature, which contain ample evidence that they are the productions of ſome Neo-Platoniſt, and can ſcarcely have been written before the fifth or ſixth century. Whatever their origin, however, they exerciſed a very great influence upon the formation and development of Chriſtianity in the middle ages. They were tranſlated into Latin by Scotus Erigena in the ninth century, and gave the firſt impulſe to that myſtic and ſcholaſtic theology in Weſtern Europe, which afterwards maintained itſelf for centuries. (Dict. of Greek and Roman Biography.) I am not ſure whether the following is the paſſage intended in the text: "In Divinâ unione ſeu ſuperſubſtantialitate copulatum quidem unitatis principi Trinitati (τῇ ἐναρχικῇ τριάδι), ac commune eſt, ſupereſſentialis exiſtentia, et ſupra quàm Divina Divinitas, ſupra quàm bona bonitas (ἡ ὑπέρθεος θεότης, ἡ ὑπεραγαθὶς ἀγαθότης)" &c. De Div. Nom. c. II.

CHAP. XXXVII. *Sanctus Auguſtinus dicit quòd in Sole ſunt ſubſtantia*, &c.] Dr. Ullathorne writes upon this: "The paſſage aſcribed to St. Auguſtine, 'In ſole ſunt ſubſtantia ejus, radices, et calor,' &c. I do not believe to be St. Auguſtine's. You will find ſomething very like it, and in ſubſtance the ſame, in St. Thomas's Commentary on the Maſter of the Sentences, lib. II. diſt. xiii., where he quotes Avicenna to prove that heat is generated from light; but he gives the paſſage as his own, and if he could have found anything like it in St. Auguſtine, he certainly would have quoted it as deciſive authority, according to his invariable practice. In St. Auguſtine's Soliloquia, there is a paſſage in which the ſun is uſed as an illuſtration of the Trinity, 'In ſole eſt eſſe lucere, illuminare,' &c. It is one of his earlieſt works; and when his mind was more theologically matured, as when he wrote the De Trinitate, he limited his illuſtrations within the ſphere of metaphyſics and pſychology, feeling the inaccuracy of material ſimilitudes. Tertullian is the author quoted for the illuſtration from the ſun.

Petavius in his Dogmata, and Klee in his Hiſtory of Dogmas, quotes Tertullian Adverſus Praxean., chap. viii., where he gives the illuſtration of the 'Solis ſubſtantia, radius et apex radii.' Then Klee ſhows that St. Auguſtine kept to the metaphyſical illuſtration of the ſubſtance, mode, and their eſſential connexion, and to the phyſical illuſtration of the conſcience (or memory) the intelligence and will. He then adds that Prudentius, after Tertullian, uſed the illuſtration from the ſun, the ſubſtance of the ſun as ſymbolizing the unity of the Deity, and the action, light, and heat, 'lux et calor,' as ſymbolizing the Trinity of Perſons. My impreſſion is, that Forteſcue quoted at ſecond hand, and from a ſpurious ſource, perhaps from the De Dignit. Condit. Human., from ſome chapter headed De Trinitate. This is my conjecture. My reaſon for concluding that St. Auguſtine did not write the paſſage is, that, writing with the whole Arian controverſy before him, he would not have employed an illuſtration which ſeemed to aſſign the whole *ſubſtantia* to the Father. Prudentius avoids this by aſſigning the *ſubſtantia* to the Unity."

CHAP. XL. *Magiſter Sententiarum.*] Peter Lombard, born near Novara, in Lombardy, 1100, died 1164. Forteſcue quotes only from his Commentary on St. Paul's Epiſtles. But his great work is that famous courſe of theology which, under the name of *Sententiarum Libri IV.*, became the text-book of the Scholaſtic Theologians.

CHAP. XLI. *Carentia originalis juſtitiæ*, &c.] The following is from Dr. Ullathorne: "I referred the paſſage to the two Profeſſors of Theology at Oſcott, and the following is the reſult of their reſearches. The definition of original ſin, 'carentia originalis juſtitiæ cum debito habendi,' is exactly equivalent to what was commonly ſaid by the ſcholaſtic writers, but they cannot find the ipſiſſima verba St. Anſelm (Liber de Peccato Originali, cap. 23) ſays 'Quòd in illis (infantibus) non eſt juſtitia quam *debent* habere, hoc non fecit illorum voluntas perſonalis, ſed *egeſtas naturalis*, quam ipſa natura accepit ab Adam.' And again (in cap. 26), he ſays: 'Hoc peccatum quod originale dico, aliud intelligere nequeo, in eiſdem infantibus ipſam, factam per inobedientiam Adæ, *juſtitiæ debitæ nuditatem.*' St. Thomas gives the ſame doctrine on the 3rd part of the Sentences, Diſt. 30, q. 1, art. 2, but in words leſs nearly identical, though more ample. The Maſter of the Sentences and St. Bonaventure have been ſearched in vain for the paſſage. Your tranſlation of the definition ſcarcely expreſſes its technical ſenſe, which wants a word or two to complete it in the Latin. *Habendi* is uſed in the ſenſe of *traducendi* ab Adamo, or ab homine. Thus St. Anſelm ſays (Liber de Conceptione Virginis et peccato originali): 'Homo ſi perſtitiſſet, juſtitiam originalem, in quâ creatus eſt, in filios profudiſſet. Sed ſicut *ſe habet* juſtus ad juſtos, ita et peccator ad peccatores. Ergo etiam quia peccavit, culpam ſuam in alios generando transfudit.' Heres the words *ſe habet* have the ſenſe of *derives from.* It comes out more clearly in St. Thomas, in 3^m^ partem Sententiarum, Diſt. xxx. queſt. 1, art. 2, where he ſays, 'Carentia alicujus (boni), etiam ſi non ſit natum *habere*, defectus poteſt dici; ſed non poteſt dici malum, niſi ſit defectus ejus boni quod natum eſt *habere:* unde *carentia* vitæ in lapide poteſt dici defectus, ſed non malum; homini vero mors eſt et defectus et malum. Culpa autem ſuper hoc addit rationem voluntarii; ex hôc enim aliquis culpatur quòd deficit in eo quod per ſuam voluntatem habere potuit.' St. Thomas then goes on to ſhew that the *culpa*, or culpability, of original ſin was only a *culpa perſona* in Adam, but in his deſcendants was and is a *culpa naturæ*, as our nature is one with that of Adam, but not our perſonality. And he thus concludes: 'Sic ergo dicendum eſt, quòd defectus illius originalis juſtitiæ quæ homini in ſuâ creatione collata eſt, ex voluntate hominis accidit: et ſicut illud naturæ donum fuit, et fuiſſet in totam naturam propagatum, homine in juſtitiâ perſiſtente; ita etiam et privatio illius boni in

totam naturam *perducitur*, quasi privatio et vitium naturæ; ad idem enim privatio et habitus referuntur, et in quo libet homine rationem culpæ habet ex hòc quod per voluntatem principii naturæ, id est primi hominis, inductus est talis defectus.' Here is the complete exposition of your definition. I have taken it from the edition of De Rubris, the one most esteemed. But in a note upon the passage I think I have found the origin, though not the exact words of the definition. That note says: 'Additur in editione Nicolai (to the words quoted above), homini vero mors est et defectus, et malum, *quia est carentia ejus quod natum est haberi ab homine.*' These are nearly the words of the quotation, which I believe ought to conclude thus (being abbreviated by your ancestor, as well known): 'Cum debito habendi *ab homine*,' *homo* meaning Adam, or natura humana."

CHAP. XLII. *Quibus concordat Damascenus.*] St. John Damascene, born about A.D. 670 at Damascus, died about 754. He was a most voluminous writer, and his printed works are far from comprising all his writings, many of which are buried in MS. in various European libraries. His chief work was the *De Fide Orthodoxâ*, which was translated into Latin, and became the great model of the School divines. (Hampden's Bampton Lectures, Biog. Univ.) I add the Greek of the passage quoted (apparently at second-hand) by Fortescue: "προνοιά ἐστι βουλὴ Θεοῦ, δι' ἧς πάντα τὰ ὄντα τὴν πρόνοφορον διεξαγωγὴν λαμβάνουσι."

CHAP. XLIII. *Studentes leges Regni Angliæ, . . . quarum peritiam vix viginti annorum lucubrationibus acquirunt . . . tot annos prætereunt incassum.*] Fortescue complains of the narrow course of study pursued by the English lawyers: the "lucubrations" of twenty years being devoted to the technicalities and refinement of our own law, with little or no attempt to master the Civil Law, or the laws of other countries, or those general principles which are or ought to be the foundation of all laws. He dwells also on the expense of a legal education. Both these complaints were doubtless well founded in his time, and continue to be so up to the present day. To this state of things may be mainly ascribed the unscientific and unsystematic character of our jurisprudence—the conflict between law and equity unknown in any other country, and consequent in this on the blind adherence of the judges to legal forms in opposition to substantial justice,—the refinements of special pleading (only recently abolished), whereby causes were disposed of on considerations wholly independent of their merits, and numerous other evils. And yet, in Fortescue's time, legal education, though not of the best sort, was more attended to than it is at present, and the Inns of Court, with their dependent societies, were much more like a university than they are now. In the 15th and 16th centuries the Inns of Chancery were in the nature of schools for the preparation of students for the Inns of Court, and a course of probation in the former was required before admission to the latter. Coke was a student at Clifford's Inn before admission to the Inner Temple. The Inns of Court directed the course of study at these preparatory inns, and appointed "readers," who delivered regular courses of lectures. "For the help of young Students in every of the Innes of Chancery," says Stow,[1] "they do chuse out of every Inn of Court a Reader, being no Bencher, but an utter barrester there of ten or twelve yeers continuance, and of good profit in studie." These readings were followed by "mootings," or debates on doubtful points of law, at the conclusion of which the Reader summed up the arguments, and gave his opinion. These readings were sometimes published, and among them were Callis's reading on the Statute of Sewers, and Bacon's on

[1] Stow's London, book i. c. 21.

the Statute of Uſes. It would ſeem that in thoſe days ſtudents for the bar went through a real education, inſtead of the eating of terms with which we have recently been content. It is fair to ſay that the ſyſtem of legal education has been lately taken up by the Inns of Court, who have already done ſomething, and have appointed a joint committee to deal with the ſubject, from whom more may be expected. There is an intereſting deſcription of the education given in the Inns of Chancery and the Inns of Court to be found in the *De Laudibus Legum Angliæ* (c. xlvii., xlviii., xlix.), where the "Chancellor" anſwers the queſtion of the "Prince," why Civil and Canon Law only, and not the Laws of England, were taught in the Univerſities. "In majoribus Hoſpitiis," he ſays, "nequaquam poteſt ſtudens aliquis ſuſtentari minoribus expenſis in anno quàm octoginta ſcutorum, et ſi ſervientem ſibi ipſe ibidem habuerit, ut eorum habet pluralitas, tanto tunc majores ipſe ſuſtinebit expenſas." But many of theſe were young men of family and fortune, not intended for the legal profeſſion.

CHAP. XLIII. *Nonne luna*, &c. and *Nam ſicut a ſole luna*, &c.] Compare the following paſſage from Dante's very curious treatiſe De Monarchiâ: "Iſti vero, ad quos erit tota diſputatio ſequens, afferentes auctoritatem Imperii ab auctoritate Eccleſiæ dependere . . . . pluribus et diverſis argumentis moventur, quæ quidem de Sacrâ Scripturâ eliciunt . . . . Dicunt enim primo, ſecundum ſcripturam Geneſeos, quòd Deus fecit duo magna luminaria, luminare majus et luminare minus, ut alterum præeſſet diei et alterum nocti; quæ allegoricè dicta eſſe intelligebant, iſta duo regimina ſpirituale et temporale. Deinde quòd quem admodum luna, quæ eſt luminare minus, non habet lucem, niſi prout recipit à ſole, ſic nec regnum temporale auctoritatem habet niſi prout recipit à ſpirituali regimine." (Lib. iii. p. 138, ed. Florence, 1839; alſo pp. 144, 146, 156.)

PART II.

CHAP. III. *Reſponſio Nepotis.*] The arguments by which the king's grandſon maintains his claim to the crown, to the excluſion of his mother, are illuſtrated by the letter written by Edward III. to the Pope and Cardinals, in which he claims the kingdom of France in right of his mother, Iſabella. "Ad hoc etiam per jus memoratum à regno fragilitas muliebris excluditur, ut regno ſalubriùs conſulatur, et proximior maſculus admittendus aliàs admittatur potiſſimè ad jus illud, quod primordialiter à matre ſic excluſâ non oritur, ſed in nepotem propagatum ab avo originaliter dirivatur. . . . . juris ejuſdem judicio, quo mater à ſucceſſione expellitur, filio gradum matris ingreſſo ſucceſſio tunc differtur, ſimilitudine filii qui gradum parentis deficientis ingreditur, ... ut ſic merito triſtis mater, præfato rigore regiâ hereditate nudata, ſubſtitutione taliter ſibi factâ, de filio gaudeat conſolata, nec afflictioni afflictionem accumulet," &c. The whole letter is given in Rymer's Fœdera.—*Litteræ quas Rex Angliæ ad Papam et Cardinales miſit jus ſuum in regno Franciæ declarantes*, A.D. 1339, An. 13 Edw. III. ed. 1821, vol. ii. part ii.

CHAP. IV. *Juſtam rem poſtulant filiæ Salphaad.*] It is evident that this caſe of the daughters of Zelophahad was not forgotten by the advocates of female government in the next century, when queens were in the aſcendant; for John Knox thinks it neceſſary to refute the argument drawn from it, in his *Firſt Blaſt to awake Women degenerate*, written againſt Mary of England. I give a few extracts from that fiery pamphlet, which ſupply a curious compariſon with ſeveral paſſages of this treatiſe. "To promote a Woman to bear Rule, Superiority, Dominion, or Empire above any Realm, Nation, or City,

is repugnant to Nature, contumely to God, a thing moſt contrarious to His revealed Will and approved Ordinance, and finally the ſubverſion of Good Order, of all Equity and Juſtice." . . . . "Ariſtotle and others, illuminated only by the Light of Nature, did ſee and pronounce Cauſes ſufficient why Women ought not to bear Rule or Authority. I am ſure if they were living this Day, to ſee a Woman ſitting in Judgement, or riding from Parliament in the midſt of Men, having the Royal Crown upon her head, the Sword and Sceptre borne before her, in Sign that Adminiſtration of Juſtice was in her Power, they would be ſo aſtoniſhed with ſuch a ſight, that they would judge the world to be transformed into Amazons," &c. He quotes the Civil Law, St. Paul, Ariſtotle, Tertullian, and Auguſtine's definition of "ordo;" he refers to the order of creation, and to the analogy of the natural body with its head; and upon Deuteronomy, xvii. 14, 15, he ſays: "when Males of the Kingly Flock failed, it never entered into the People's Hearts to chuſe and promote to Honour any of the King's Daughters, had he never ſo many." He alludes (like Forteſcue) to the precedent of Deborah, and ſays: "God by His ſingular Privilege, Favour, and Grace, exempted Deborah from the common Malediction given in that behalf to Women, and againſt Nature He made her prudent in Counſel, ſtrong in Courage," &c. Then, upon Numbers xxvii., he comments thus: "The Portion of Zelophahad's Daughters was not to reign over any one Tribe, nor yet over any one Man within Iſrael, but only that they might have a Portion of Ground among the Men of their Tribe, leſt that the Name of their Father ſhould be aboliſhed. . . . . And what maketh this, I pray you, for the eſtabliſhing of this monſtrous Empire of Women? Although Women may ſucceed to the Poſſeſſion, Subſtance, Patrimony, or Inheritance of their Fathers, yet they may not ſucceed in their Father's Offices," &c. Shakſpeare alſo introduces into King Henry the Fifth a reference to this Old Teſtament precedent. The king aſks (act i. ſc. 2), "May I with right and conſcience make this claim?" the claim to the kingdom of France; and the Archbiſhop of Canterbury anſwers:

> "The ſin upon my head, dread ſovereign!
> For in the Book of Numbers it is writ,
> When the ſon dies, let the inheritance
> Deſcend unto the daughter."

CHAP. VI. *Sic Dominus noſter . . . . vivente matre.*] Compare the ſame argument in Edward III.'s Letter to the Pope. "Aliter etiam ſi pro eo quod mater ex jure non admitteretur ad regnum, repelli jure filius intelligeretur à regno, Judæorum regnum contra fidei fundamentum non perveniſſet legittimè ad Jeſum, qui tamen natus Dei miniſterio, non virili conſortio, ex fœminâ regali prole Davidicâ, Mariâ Virgine, ad regnum hujus non admiſſâ, nec etiam admittendâ, per certam fidei veritatem, Rex verus et legitimus extitit Judæorum." *Rymer, as above.*

CHAP. VIII. "*Mas occaſionatus.*"] This is one of the *Auctoritates Ariſtotelis*, and is a verſion of his words in the De Generatione Animalium, ii. 3. τὸ γὰρ θῆλυ ὥσπερ ἔστιν ἀρρὲν πεπηρωμένον. As to *occaſionatus*, it is given in Ducange with an illuſtration, which happens to be this very aphoriſm—"Fœmina eſt mas occaſionatus, id eſt, imperfectus;" but it is properly "taxed," "mulcted," *occaſio* being defined by Ducange as "Tributum quod propter *occaſiones* bellorum &c. imponitur." Aquinas in the De Reg. Prin. quotes the ſaying thus:—"Tradit Philoſophus de geſtis animalium, quòd mulier eſt maſculus occaſionatus," iv. 5.

CHAP. IX. *ff. De Regulis Juris l. Feminæ.*] Gibbon complains of this mode of quotation. "The Civilians of the darker ages have eſtabliſhed an abſurd and incomprehenſible mode of quotation, which

is ſupported by authority and cuſtom. In their references to the Code, the Pandects, and the Inſtitutes, they mention the number, not of the Book, but only of the Law, and content themſelves with reciting the firſt words of the *Title* to which it belongs; and of theſe Titles there are more than a thouſand." Here the particular *Law* is quoted by its firſt word. (Chap. xliv. Note.)

CHAP. X. *Si terram.*] See Coke upon Littleton, lib. i. c. 2, ſect. 24. "Alſo, if lands be given to a man and to the heires males of his body, and he hath iſſue a daughter, who hath iſſue a ſonne and dieth; and after the donee die; in this caſe, the ſon of the daughter ſhall not inherit by force of the entaile; becauſe whoſoever ſhall inherit by force of a gift in taile made to the heires males, ought to convey his deſcent whole by the heires males. Alſo, in this caſe the donor may enter, for that the donee is dead without iſſue male in the law, inſomuch as the iſſue of the daughter cannot convey to himſelfe the deſcent by an heire male."

CHAP. X. *Donum talliatum,* &c.] A "gift in tail." See Coke upon Littleton, lib. i. c. 2. ſect. 13. "If lands had beene given to a man and to his heires males of his bodie, and he had iſſue two ſonnes, and the eldeſt had iſſue a daughter, the daughter was not inheritable to the fee-ſimple, but the younger ſon *per formam doni.*"

CHAP. X. *The Genealogy of Our Lord.*] Forteſcue curiouſly argues that as our Lord inherited from David through his mother, he could have no hereditary title to David's throne in the lifetime of Joſeph, who, he contends, was the direct ſucceſſor in the male line. He makes a very lame attempt to ſolve the well-known difficulty that St. Matthew, profeſſing to give "the generation of Jeſus Chriſt, the ſon of David," gives the genealogy of Joſeph. He alſo notices that Mary is not ſaid by Matthew to have been of the line of Solomon, and conjectures from Luke iii. 31 that ſhe was deſcended from Nathan, another of David's ſons. The fact, however, is, that "the two genealogies are both the line of Joſeph, and not of Mary," and that Mary's deſcent from David is "nowhere expreſſed in the goſpels." See Alford on Luke i. 27, and iii. 23.

CHAP. XVIII. *Hugo de Sancto Victore.*] A learned eccleſiaſtical writer of the twelfth century, who filled the chair of theology in the Abbey of St. Victor at Paris, and died in 1140. Among his numerous works the moſt conſiderable was a *Summa Sententiarum*, the firſt complete courſe of theology compoſed after the faſhion followed by the more celebrated Peter Lombard and others, and a treatiſe, *De Sacramentis*, quoted by Forteſcue. (Biog. Univ.)

CHAP. XVIII. *Vincentius in Speculo Hiſtoriali.*] "Mulier quoque, licet prædita ſit ratione ſicut vir, dicitur tamen eſſe gloria viri, non tamen imago Dei; eâdem ratione quâ nec angelus; et etiam majori, quia, ſcilicet, viro ſubdita eſt, non domina; et quia non eſt origo omnium ſicut ille; et quia non eſt a Deo facta immediatè, ſcilicet, formata de viri latere; et quia non habuit ab initio rationem ita limpidam ſicut vir, unde à diabolo ſeducta eſt, non vir; item propter duplex myſterium, ſcil. Chriſti et Eccleſiæ, ſuperioris et inferioris partis rationis," &c. Lib. i. c. 41. "De Dignitate Hominis et Creatione Mulieris."

CHAP. XIX. *Forma.*] The word is uſed by Columella, De conficiendo caſeo, vii. 8, "Liquor in fiſcellos, aut in calathos vel *formas* transferendus eſt," and "*formis* buxeis caſeum exprimere." See Scheller's Lexicon.

CHAP. XXIII. *Auctor de cauſis.*] The name of the "Auctor de Cauſis" is Alfarabius. He is edited by Ægidius Romanus, and is printed in a volume bearing the title "Fundatiſſimi Ægidii Romani, Archiepiſcopi Bituricenſis, Doctorum præcipui, ordinis Eremitarum Sancti Auguſtini, Opus ſuper Auctorem

de Cauſis, Alfarabium," Venice, 1550. The propoſitions of the "Auctor" are given at length, and Ægidius comments on them. The paſſage referred to by Forteſcue is this:—"Quoniam omnem operationem quam efficit cauſa ſecunda, efficit et cauſa prima, verum tamen cauſa prima efficit eam per modum altiorem et ſublimiorem," ed. 1550, fol. 4to. There is a comment on the "Auctor" among the works of Aquinas, whence Forteſcue may have derived his knowledge of it. I am indebted for this note to Profeſſor Stubbs and the Rev. H. O. Coxe, Librarian of the Bodleian.

CHAP. XXV. *Sub viri poteſtate eris et ipſe dominabitur tui.*] Compare the Declaracion made by John Forteſcue Knyght upon certayn writings ſent oute of Scotteland ayenſt the Kinges title, &c. This paſſage, according to the "Lerned Man," is the "oone matier which nedith right gret and clere declaracion," and is got over by our author in this faſhion:—"That every woman is under the power and lorſhippe of ſume one man, which is all that ſhe is aſked unto by the forſaid juggement in Geneſis, may not be denied; for every woman is under the power and lordſhippe of the Pope, whiche is a man," &c.

CHAP. XXXII. *Ad oſtium Eccleſiæ.*] This is dower *ex aſſenſu patris*, which is a ſpecies of dower *ad oſtium eccleſiæ*. See Coke upon Littleton, lib. i. c. 5, ſects. 39, 40. "Dowment by aſſent of the father is, where the father is ſeiſed of tenements in fee, and his ſonne and heire apparent, when he is married, endoweth his wife at the monaſtery or church door of parcel of his father's lands or tenements with the aſſent of his father, and aſſigns the quantity and parcels." And Bracton (quoted in ſect. 39) ſays, "Hæc conſtitutio fieri debet in facie eccleſiæ, et ad oſtium eccleſiæ; non enim valet facta in lecto mortali (or, maritali), vel in camerâ, vel alibi ubi clandeſtina fuere conjugia." By the 27 Hen. VIII. c. 10 (the Statute of Uſes) the evils and inconveniences of dower, operating to reſtrain the ſale of lands and in other troubleſome ways, were mitigated by providing jointure in lieu of dower; ſo that no widow who had a jointure could claim dower; and they were removed by the ſtat. 3 and 4 Will. IV. c. 105, which ſubſtantially ſubjects the wife's right of dower entirely to the will of her huſband.

CHAP. XXXIII. *Ordinarios.*] In civil law "Ordinary" means any judge who takes cognizance of cauſes in his own right, and not by deputation; but by the common law it is taken for him who has *ordinary* or exempt, or immediate jurisdiction in cauſes eccleſiaſtical. Coke, Litt. 344. It is applied not only to archbiſhops and biſhops, but to every commiſſary and official of the biſhop who has judicial power; and to the eccleſiaſtical officers who adminiſter the eſtates of inteſtates, in which ſenſe it is uſed in the text. By the ſtat. Weſt. 2 (13 Edw. I. c. 19), it is enacted, "Cum poſt mortem alicujus decedentis inteſtati et obligati aliquibus in debito bona deveniant ad ordinarios diſponenda obligetur de cetero ordinarius ad reſpondendum de debitis quatenus bona defuncti ſufficiunt, eodem modo quo executores hujuſmodi reſpondere tenerentur ſi teſtamentum feciſſet." The ſtatute does not preſcribe what the ordinary is to do with the remainder after paying the debts, and Forteſcue ſeems to imply that he ought to diſtribute it among the widow and children according to the cuſtom of the locality. But it is well known that the eccleſiaſtics, even before Forteſcue's time, were in the habit of neglecting this duty, and appropriating the goods of inteſtates to a great degree in "pios uſus," to remedy which abuſe, and to eſtabliſh a uniform ſyſtem of diſtribution, the Statute of Diſtributions (22 and 23, c. 2, c. 10), was paſſed, which is ſtill in force, quoad the diſtribution of effects, but the power of granting letters of adminiſtration has been transferred from the "ordinary" to the Court of Probate.

CHAP. XXXV. *Leonardus Aretinus.*] Leonardo Bruno of Arezzo (1369—1444. One of the reſtorers of claſſical learning in Italy in the 15th century. He learnt Greek from Emanuel Chryſoloras whoſe arrival at Florence as a public teacher of that language in 1395 was, ſays Hallam, "the true

epoch of the revival of Greek literature in Italy." He was ſecretary to Pope Innocent VII., and ſucceeding popes, and afterwards ſecretary to the Republic of Florence, where he paſſed the latter part of his life. "In the conſtellation of ſcholars who enjoyed the ſunſhine of favour in the palace of Coſmo de Medici, Leonard Aretin was one of the oldeſt and moſt prominent. He died at an advanced age in 1444, and is one of the ſix illuſtrious dead who repoſe in the church of Sta. Croce." Hallam adds the anecdote that Madame de Stael, in her Corinne, unfortunately confounded this reſpectable ſcholar with Pietro Aretino. Among his numerous works are the "De Bello Gothico" (from Procopius), "De Temporibus Suis," "De Bello Punico," Tranſlations of Plutarch, of the Politics and Economics of Ariſtotle, &c., and a commentary on the Ethics, under the name of *In Libros Morales Ariſtotelis Iſagogicum*, which was printed by John of Weſtphalia in 1483, and is here quoted by Forteſcue a few years before that time, and ſome twenty years after the death of the writer. Hallam, Lit. of Europe, part i. ii. 6. Biog. Univerſelle. Bayle. He alſo made a tranſlation of the Ethics, printed at Oxford by Corſellis in 1479, and the ſecond book produced from the Oxford preſs, which is wrongly deſcribed in Watt's Bibliotheca as a commentary.

CHAP. XXXVI. *Macrobius.*] Macrobius, the grammarian. Nothing can be aſſerted with confidence with regard to his life, except that he flouriſhed about the beginning of the 5th century, in the age of Honorius and Theodoſius, and that he was probably a Greek. His works are *De Differentiis et Societatibus Græci Latinique Verbi* (grammatical), *Saturnaliorum Conviviorum Libri VII.*, a ſeries of curious and valuable diſſertations upon criticiſm and antiquities, and *Commentarius in Somnium Scipionis*, greatly admired and ſtudied during the middle ages (Dict. of G. and R. Biograph.).

CHAP. XLII. *Dominus quaſi dans minas.*] I find this notion in a newſpaper article of this year (1868), I believe in the *Pall MallGazette*—"the idea of command in the proper ſenſe of the term, whichis organized *threatening*."

CHAP. XLVI. *Collateralis et ſocia.*] Compare the following from the *Catholicon* of Januenſis, at the article *Mulier*. "Mulier à *mollis*, quaſi *mollier*" (!) . . . . . "Hic poteſt quæri quare mulier facta eſt de coſtâ viri. Ad hoc eſt dicendum quòd ſic dicitur in Libro Sententiarum ſecundo:—'Deo de latere viri facta fuit mulier ut oſtenderetur quòd in conſortium creabatur dilectionis; ne forte, ſi fuiſſet de capite facta, viro ad dominatricem videretur preferenda, aut, ſi de pedibus, ad ſerviendum ſubjicienda. Qui ergo viro nec domina, nec ancilla parabatur ſed ſocia, nec de capite, nec de pedibus fuerat producenda.'"

CHAP. XLVIII. *Collatione ixª.*] A reference to the "Authenticæ," or "Authenticum." *Authenticæ* was the name given to the ancient, and barbarouſly literal, Latin verſion of the *Novellæ Conſtitutiones*, or Novels of Juſtinian, "quoniam ex ipſo græco originali ad literam tradučta eſt." (Ducange.) This verſion was rediſtributed by an unknown interpreter in the reign of the emperor Frederic I. (about A.D. 1140) into nine *Collationes*, in which no order either of time or ſubject ſeems to have been obſerved. Gravina ſays—"Hæ Novellæ primo græcè prodierunt, deinde verſæ fuerunt Latinè ab Anonymo, et evulgatæ, imperante Juſtino II . . . . . Prodierunt et aliæ verſiones, nempe Haloandri &c., quibus, ut elegantia major acceſſerit, legis tamen defuit auctoritas, quæ tributa tantùm fuit Anonymo illi qui, præceptum Juſtiniani ſecutus, eos vertit κατὰ πόδας, hoc eſt, verbum verbo, eodem ordine ſervato, reddidit; proptereaque vocatum hoc volumen fuit Authenticum . . . . . Burgundio vero, ſive interpres alius, neglecto prorſus veterum novellarum numero, ex antiquâ ſerie jam perturbatâ A. C. 1140 novam pertexuit in novem Collationes tributam, in quas, ſuppreſſo priori ordine, ſuperſtites Novellas digeſſit.

Dictæ ſunt autem Collationes, quaſi collatæ ad alias, atque oppoſitæ, ad declarandas vel abrogandas ſuperiores leges Codicis, et propterea extremo codici adjectæ. Quod volumen in uſû poſitum, ſpretis aliis editionibus Authenticum fuit appellatum." (Origines Juris Civilis, lib. i. cap. 135.) Briſſonius, however (De Verborum quæ ad Jus Civile pertinent ſignificatione), gives a more natural explanation of the term Collatio. "*Collationes* etiam parum Latine vocantur partes collectionis Novellarum Juſtiniani, quaſi *συλλογαί*, vel *Collectiones*, *συμφορήματα*." The words quoted in the text will not be found under the title "De legitimâ tutelâ," which is tit. xxx. of book v. of the Codex (they are added there in Beck's ed. Lipſiæ, 1829), but under Collatio ix^a. tit. i. of the Authenticæ, De Hæredibus ab inteſtato venientibus, &c., alſo as Nov. Conſt. cxviii. cap. 5, or Conſt. cxiv. cap. 5.

CHAP. L. *Gudex in criminibus veritatem extorquet torturis.*] Forteſcue muſt not be taken as affirming that torture was in accordance with the law of England, but only that it was practiſed. He has indeed put upon record in the *De Laudibus Legum Angliæ* (cap. 22) an indignant proteſt againſt its uſe, calling the practice of it "non lex, ſed potius ſemita ipſa ad gehennam." It was unquestionably part of the Civil Law, but was never ſanctioned in this country by Common Law, or by ſtatute, unleſs the recital in the 27th Hen. VIII. c. 4, that offenders of a particular claſs would confeſs "without pains or torture," can be conſidered as a ſtatutory recognition. It was prohibited by Magna Charta, as conſtrued by Lord Cope, "nullus liber homo aliquo modo deſtruatur," &c. In Felton's caſe (1628) the king put it to the Judges, "whether by Law he might not be racked?" to which they all anſwered, "He ought not by the Law to be tortured by the rack, for no ſuch puniſhment is known or allowed by our law." It is clear, nevertheleſs, that torture was frequently practiſed by warrant from the Crown, and for centuries ſuch an exerciſe of the prerogative does not appear to have been diſputed. The laſt uſe of torture in England was in 1640. In Scotland, it was legal until aboliſhed by the 7th Anne, c. 21.

CHAP. LIII. *In Authen. de Conſulibus*, § *Si vero, Coll. iv.*] I find this reference (Coll. IV.) in an "Index Conſtitutionum quæ Authentici ſunt ex vulgari Collationum Diviſione deſcriptarum," contained in an edition of the Novels publiſhed at Leipſic, 1851 (Heimbach). But De Conſulibus will generally be found as Collatio IV. 3, or Novella ("ex corpore CLXVIII. Novellarum") CV. 2, or Conſt. XXXIV. 2. See Note on chap. xlviii.

CHAP. LVII. "*Moralis Catonis.*"] Much has been conjectured, but nothing is known concerning the origin of the ſmall volume, which commonly bears the title of *Dionyſii Catonis Diſticha de Moribus ad Filium*, and which in the earlier printed editions was frequently called *Cato Moraliſatus*, *Cato Moraliſſimus*, &c. It has been aſcribed to Seneca, Boethius and others, and probably belongs to the Silver Age of Latin literature. It conſiſts of a ſeries of moral precepts in hexameters, many of which were familiarly known in the fourth century, and throughout the Middle Ages. Chaucer often quotes it, and its popularity in Forteſcue's day is indicated by the fact that a tranſlation of it is one of the oldeſt ſpecimens of Engliſh printing, Caxton's *Booke callyd Cathon* having appeared in the year 1483. (See Smith's Dict. of Greek and Roman Biography.)

CHAP. LXII. *Sapiens . . . . cum dicat "mulierem fortem quis inveniet? procul et de ultimis finibus pretium ejus."*] The Vulgate of Proverbs xxxi. 10. Wycliff tranſlates it thus: "A ſtrong woman who ſhall find? aferr and fro the utmoſt end is the pris of her." But the LXX. has: Γυναῖκα δυναμένην τίς εὑρήσει; τιμιωτέρα δέ ἐστι λίθων πολυτελῶν ἡ τιμὴ αὐτῆς: and the E.V.: "Who can find a virtuous woman? for her price is far above rubies."

CHAP. LXIII. *Sanctus Gregorius ſcribens Auguſtino*, &c.] The paſſage is from St. Gregory's third

letter to Auguſtine, "the apoſtle of the Engliſh," in reply to a ſtring of queſtions propounded by the latter for ſolution. Gregory's words are: "Peccatum ex tribus conſummare, ſuggeſtione, delectatione, et conſenſu. Suggeſtio quippe ſit per diabolum, delectatio per carnem, conſenſus per ſpiritum: quia cum primam culpam ſerpens ſuggeſſit, Eva velut caro delectata eſt, Adam velut ſpiritus conſenſit."

CHAP. LXIII. *Sanctus Auguſtinus ſuper hôc verbo, "neque ex voluntate carnis."*] The paſſage from St. Auguſtine occurs in the Commentary on John i. 13, and is more forcible than Forteſcue's paraphraſe. It is as follows: "Ponitur ergo caro pro uxore, quomodo et aliquando ſpiritus pro marito. Quare? Quia ille regit, hæc regitur, ille imperare debet, iſta ſervire. Nam ubi caro imperat, et ſpiritus ſervit, perverſa domus eſt. Quid pejus domo, ubi fæmina habet imperium ſuper virum? Recta autem domus, ubi vir imperat, fæmina obtemperat. Rectus ergo ipſe homo, ubi ſpiritus imperat, caro ſervit." It is ſtrange that Auguſtine ſhould reverſe the proper uſage of the "hæc" and the "ille."

CHAP. LXIII. *Magiſter Sententiarum . . . . ſentire videtur, quòd ſi Adæ conſenſus*, &c.] The paſſages no doubt intended in Peter Lombard are as follows: "Vel potius ideo per hominem dicitur intraſſe, (peccatum) quia etiam peccante muliere, ſi vir non peccaſſet, humanum genus minimè peccatis corruptum periret." (Lib. II. Diſt. xxii. G.) And "Ut enim tunc ſerpens malum ſuaſit mulieri, ipſa que conſenſit, deinde viro ſuo dedit, ſic que conſummatum eſt peccatum; ita et nunc in nobis pro ſerpente eſt ſenſualis motus animæ; pro muliere inferior portio rationis, pro viro ſuperior rationis portio. Et hic eſt vir qui ſecundùm Apoſtolum dicitur imago et gloria Dei, et illa eſt mulier quæ ſecundùm eundem eſt gloria viri. Atqui inter hunc virum et hanc mulierem eſt velut quoddam ſpirituale conjugium, naturaliſque contractus, quo ſuperior rationis portio, quaſi vir, debet præeſſe et dominari, inferior vero, quaſi mulier, debet ſubeſſe et obedire." (Lib. II. Diſt. xxiii.) The latter is a ſtriking paſſage, in its way, which would have come well into our author's argument.

DE LAUDIBUS LEGUM ANGLIÆ.

BY SIR JOHN FORTESCUE, KNIGHT,

LORD CHANCELLOR TO KING HENRY THE SIXTH.

WITH THE TRANSLATION INTO ENGLISH.

FIRST PUBLISHED A.D. 1737,

BY FRANCIS GREGOR.

THIS very famous Tract was the ſecond of the two Eſſays produced by Sir John Forteſcue for the benefit of Edward Prince of Wales, eldeſt ſon of King Henry the Sixth, during his exile in Barrois.

This circumſtance limits the date of its compoſition, or, at all events, of its appearance in its preſent form, to the period between 1464 and 1470; while its alluſions to the earlier part of that period, as to a time long gone by, make it almoſt certain that Forteſcue completed it towards the end of his ſojourn in France.

It was firſt printed in the reign of Henry VIII. by Edward Whitechurche, who began to print in the year 1537, without date, in black letter, and in 16mo. form, with the following title and addreſs to the reader :—

" Prenobilis Militis cognomento FORTESCU, qui temporibus Henrici Sexti floruit, de politica adminiſtratione, et legibus civilibus florentiſſimi Regni Anglie, commentarius.

Excuſum Londini tipis Edwardi Whitechurche et veniunt in edibus Henrici Smyth, Bibliopole.

Cum privilegio ad imprimendum ſolum."

" PIO LECTORI.

Iſtius non minus pii quam eruditi opuſculi exemplar nactus, quum antiquitatem venerandam una cum eruditione ac pietate conjunxerit : non potui, optime lector, aut patrie tam ingratus, aut antiquitatis tam inofficioſus cultor eſſe, ut te illius lectione diutius fraudarer. Continet enim in ſe (ut cetera taceam) politicarum et civilium noſtre Anglie legum quibus preclara et florentiſſima hec reſpublica ſub illuſtriſſimo et nunquam ſatis laudato principe noſtro Henrico octavo, ejuſque progenitoribus regibus Anglie hactenus feliciſſime fuerit erecta, inſtituta, et gubernata, doctiſſimum encomion. Unde eaſdem noſtras leges non ſolum Romanorum Cæſarum, ſed et omnium aliarum nationum conſtitutiones multis parafangis prudentia, juſtitia, et equitate precellere facile preſpicias.

Eme ergo, lege, et fruere, ac labores noſtros boni conſule.

Vale."

The firſt Engliſh tranſlation was made by Robert Mulcaſter, who printed it with the Latin text in Elizabeth's reign, in 16mo. without date, and again in 1573.

Watts enumerates editions of the ſame tranſlation in 1575, 1578, 1599, and 1609.

In 1616, the text, varying in a few places from the preceding editions, together with the tranſlation by Mulcaſter, was again publiſhed in 16mo., with preface and notes by John Selden, but without his name; he added "the two Summes of Sir Ralph de Hengham" in the ſame volume. This volume was reprinted in 1660, and all ſubſequent editions of the Treatiſe give the text as adopted by the learned editor in 1616.

In 1672 an edition in 16mo. came out, with Selden's name, and with Mulcaſter's tranſlation printed for the laſt time.

We now come to a much improved appearance of "De Laudibus." In 1737, Mr. Francis Gregor, of Trewarthennick, near Truro, in Cornwall, publiſhed it with good type and paper in ſmall folio, with a new tranſlation, preface, and notes, preſerving alſo thoſe by Selden. In 1741 he brought out, in the ſame ſhape, a ſecond edition of the work down to the end of the Index to the Engliſh tranſlation, binding up with this edition copies of the Latin text with the title dated 1737, being part of the firſt edition. Both theſe editions are without the editor's name.

In 1775 a new edition appeared in 8vo., with the name of "Francis Gregor, Eſq." on the title-page, being a literal reprint of the two former, without any new matter. Theſe three editions include Hengham's two tracts.

Fifty years later, in 1825, Mr. Amos, a barriſter of Lincoln's Inn, republiſhed at Cambridge, in 8vo., Gregor's tranſlation and text, with notes of his own; and I learn with pleaſure from Mr. T. C. Jarvis, of the Middle Temple, that he and Mr. Poynter of the ſame Inn of Court, are preparing to publiſh an edition of the Treatiſe with copious notes.

The Latin text now given, including the corrupt mediæval ſpelling, is that of the earlieſt MS. of "De Laudibus" known to exiſt. It is preſerved in the Univerſity Library at Cambridge, and is held to have been written not later than in the ſecond half of the fifteenth century. The autograph ſignature of Sir Robert Cotton is on its firſt page, and certain omiſſions have been ſupplied in the handwriting of Biſhop Tanner. This MS., which is neither very carefully nor correctly written, has been collated by me with Whitechurche's firſt edition, from which, except in certain words and one entire paſſage, all apparently left out by a haſty tranſcriber, it rarely differs; theſe omiſſions have been ſupplied from that ſource.

The only other MS., beſides that at Cambridge, which has come to light is in the Britiſh Muſeum in the handwriting of Glover, who lived in the reign of Elizabeth.

The tranſlation which follows is by Gregor.

INTRODUCTIO MATERIE.

SEVIENTE dudum in regno Anglie nefandiſſima rabie illa qua piiſſimus ibidem Rex Henricus ſextus, cum Margareta Regina conſorte ſua, filia Regis Jeruſalem et Cicilie, ac eorum unigenito Edwardo principe Wallie, inde propulſi ſunt, ſub qua et demum Rex ipſe Henricus a ſuis deditis ſuis deprehenſus carceris diutinum paſſus eſt horrorem. Dum Regina illa cum ſobole ſua, patria ſua ſic extorres, in Ducatu Barreni predicti Regis Jeruſalem dominio morabantur. Princeps ille, mox ut factus eſt adultus, militari totum ſe contulit diſcipline, et ſepe ferocibus et quaſi indomitis inſedens caballis, eos calcaribus urgens, quandoque lancea, quandoque mucrone, aliis quoque inſtrumentis bellicis, ſodales ſuos, juvenes ſibi ſerviente bellancium more invadere, ferireque, juxta martis gimnaſii rudimenta, delectabatur. Quod cernens miles quidam grandevus, predicti Regis Anglie Cancellarius, qui eciam ibidem ſub eadem clade exulabat, Principem ſic affatur.

Cap. I.

Et hic Cancellarius Primo Movet Principem ad diſciplinam Legis.

GAUDEO vero, ſereniſſime Princeps, ſuper nobiliſſima indole tua, videns quanta aviditate militares tu amplecteris actus; convenit namque tibi taliter delectari, nedum quia miles es, ſed amplius quia Rex futurus es. Regis namque officium pugnare eſt bella populi ſui, et eos rectiſſime judicare, ut Primo Regum VIII.° Capitulo clariſſime tu doceris. Quare ut armorum utinam et legum ſtudiis ſimili zelo te deditum contemplarer, cum ut armis bella, ita legibus judicia peragantur. Que Juſtinianus Auguſtus, equiſſima librans mente, in initio prohemii libri ſui Inſtitutionum ait Imperiam majeſtatem non ſolum armis decoratam, ſed et legibus oportet eſſe armatam, ut utrumque tempus bellorum et pacis recte poſſit gubernare. Tamen, ut ad legum ſtudia fervide tu anheles, maximus Legiſlator ille Moiſes, olim Synagoge Dux, multo forcius Ceſare te invitat, dum Regibus Iſrael divina autoritate ipſe precipiat eorum leges legere omnibus diebus vite ſue, ſic dicens: "Poſtquam ſederit Rex in ſolio regni ſui, deſcribet ſibi Deuteronomii leges in volumine, accipiens exemplar a ſacerdotibus Levitice tribus, et habebit ſecum legetque illud omnibus

diebus vite ſue, ut diſcat timere Dominum Deum ſuum, et cuſtodire verba et ceremonias ejus, que in Lege ſcripta ſunt," (Deutero. xvii. Capit.) Quod exponens Helynandus dicit, "Princeps ergo non debet juris ignarus eſſe, nec pretextu militie legem permittitur ignorare." Et poſt pauca, "A ſacerdotibus Levitice tribûs aſſumere jubetur exemplar Legis, id eſt a viris catholicis et literatis" Hec ille. Liber quippe Deuteron. omii eſt liber legum, quibus Reges Iſrael ſubditum ſibi populum regere tenebantur. Hunc librum legere jubet Moſes Reges, ut diſcant timere Deum, et cuſtodire ejus mandata que lege ſcripta ſunt. Ecce timere Deum effectus eſt legis, quem non conſequi valeret homo, niſi prius ſciat voluntatem Dei, que in lege ſcripta eſt. Nam principium omnis famulatûs, eſt ſcire voluntatem Domini cui ſervitur. Legis tamen lator Moiſes primo in hoc edicto effectum legis, videlicet, timorem Dei commemorat: deinde ad cuſtodiam cauſe ejus, videlicet, mandatorum Dei ipſe invitat. Nam effectus prior eſt quam cauſa in animo exhortantis. Sed quis eſt timor ille quem promittunt leges obſervatoribus ſuis? vere non eſt timor ille, de quo ſcribitur quod perfecta charitas foras mittit timorem. Timor tamen ille, licet ſervilis, ſepe ad legendum leges Reges concitat, ſed non eſt ipſe proles legis. Timor vero, de quo hic loquitur Moſes, quem et pariunt leges, eſt ille de quo dicit Propheta: "Timor Domini ſanctus permanet in ſeculum ſeculi;" Hic filialis eſt et non novit penam, ut ille qui per caritatem expellitur. Nam iſte a legibus proficiſcitur, quæ docent facere voluntatem Dei, quo ipſe penam non meretur. Sed gloria Domini eſt ſuper metuentes eum, quos et ipſe glorificat. Timor autem iſte timoris ille eſt, de quo Job, poſtquam multipharie ſapienciam inveſtigaverat, ſic ait: "Ecce Timor Domini, ipſe eſt ſapientia, et recedere a malo intelligencia." (Job xxviii. Capº.) Recedere a malo, quod intelligencia timoris Dei eſt, leges docent, quo et timorem hunc ipſe parturiunt.

Cap. II.

Replicacio Principis ad motum Cancellarii.

HEC ut audivit Princeps erecto in ſenem vultu, ſic loquutus eſt. Scio, Cancellarie, quod Liber Deuteronomii quem tu commemoras, ſacre Scripture volumen eſt; leges quoque et ceremonie in eo conſcripte ſacre ſunt, a Domino edite, et per Moiſen promulgate: quare eas legere ſancte contemplacionis dulcedo eſt. Sed lex, ad cujus ſcienciam me invitas, humana eſt, ab hominibus edita, tractans que terrena; quo, licet Moiſes ad Deuteronomii lecturam reges Iſrael aſtrinxerit, eum per hoc reges alios ad conſimiliter faciendum in ſuis legibus concitaſſe omnem effugit racionem, cum utriuſque lecture non ſit eadem cauſa.

CAP. III.

Hic Cancellarius fortificat metum suum.

AT Cancellarius, scio (inquit) per hec quæ jam objicis, Princeps, quanta advertencia exhortacionis mee tu ponderas qualitatem, quo me non infime concitas super inceptis nedum clarius, sed et profundius quodammodo tecum disceptare. Scire igitur te volo, quod non solum Deuteronomii leges, sed et omnes leges humane sacre sunt; quo lex sub hiis verbis diffinitur: Lex est sancio sancta, jubens honesta, et prohibens contraria: sanctum etenim esse oportet, quod esse sanctum difinitum est. Jus eciam describi perhibetur, quod illud est ars boni et equi, cujus merito quis nos sacerdotes appellat. Sacerdos enim, quasi sacra dans, vel sacra docens, per Ethimologiam dicitur, quia ut dicunt, jure leges sacre sunt, quo eas ministrantes et docentes Sacerdotes appellantur. A Deo eciam sunt omnes leges edite, que ab homine promulgantur. Nam cum dicit Apostolus quod omnis potestas a Domino Deo est, leges ab homine condite, qui ad hoc a Domino recipit potestatem, eciam a Deo constituuntur, dicente Auctore Causarum: "Quicquid facit causa secunda, facit et causa prima, alciori et nobiliori modo." Quare Josaphat, Rex Juda, ait judicibus suis "Judicia, que vos profertis, judicia Dei sunt," (secundo Paralipo. XIX. Cap.) Ex quibus erudiris, quod leges, licet humanas, addiscere est addiscere leges sacras et ediciones Dei; quo earum studium non vacat a dulcedine consolationis sancte. Nec tamen, ut tu cognoscis, dulcedo hujusmodi causa fuit cur Moises Reges Israel Deuteronomion legere preceperat. Nam causa hec non plus Reges quam Plebeos ad ejus lecturam provocat, nec plus Deuteronomii librum, quam alios Pentateuchi libros legere pulsat causa ista, cum non minus libri illi, quam Deuteronomium, sacris habundant carismatibus, in quibus meditari per sanctum est. Quare non aliam fuisse causam mandati hujus, quam quia in Deuteronomio plus quam in aliis libris Veteris Testamenti, leges inseruntur quibus Rex Israel populum regere obnoxius est, ejusdem mandati circumstancie manifeste nos informant. Quo, et te, Princeps, eadem causa non minus quam reges Israel exhortatur, ut legum, quibus populum in futurum reges, tu sis solers indagator. Nam, quod regi Israel dictum est, omni regi populi videntis Deum, tipice dictum fuisse intelligendum est. An tunc convenienter utiliterque proposui tibi mandatum regibus Israel latum, de eorum lege addiscenda? cum nedum ejus exemplum, sed et ejus auctoritas figuralis, te erudiunt et obligant ad consimiliter faciendum de legibus regni, quod annuente Domino hereditaturus es.

CAP. IV.

Hic probat principem per leges fieri posse felicem et beatum.

NON solum ut Deum timeas, quo et sapiens eris, Princeps colendissime, vocant te leges, cum Propheta dicente "Venite filii audite me, timorem Domini docebo vos:" sed eciam ut felicitatem, beatitudinemque (prout in hac vita nanciſci poteris) adipiscaris, ipse leges ad earum disciplinam te invitant. Philosophi namque omnes, qui de

felicitate tam varie diſputabant, in hoc uno convenerunt, viz. quod felicitas ſive beatitudo finis eſt omnis humani appetitus; quare et ipſam ſummum bonum quidam eorum appellabant. Peripatetici tamen conſtituebant eam ſolum in virtute, Stoici in honeſto, et Epicuri in voluptate. Sed quia Stoici honeſtum diffiniebant eſſe quod bene fit et laudabiliter ex virtute, et Epicuri aſſerebant nichil eſſe voluptuoſum ſine virtute, omnes ſecte ille, ut dicit Leonardus Aretienus, Yſagogico Moralis Diſcipline, in hoc concordarunt, quod ſola virtus eſt, quæ felicitatem operatur. Quo et Philoſophus in vii. Politicorum, (felicitatem diffiniens,) dicit, quod ipſa eſt perfectus uſus virtutum. Hiis jam preſuppoſitis, conſiderare te volo eciam ea que ſequentur. Leges humane non aliud ſunt quam regule, quibus perfecte juſticia edocetur. Juſticia vero, quam leges revelant, non eſt particularis illa, quæ commutativa vel diſtributativa vocatur, ſeu alia quevis particularis virtus, ſed eſt virtus perfecta, que juſticie legalis nomine deſignatur. Quam Leonardus predictus ideo dicit eſſe perfectam, quia omne vicium ipſa eliminat, et omnem virtutem ipſa docet: quo et omnis virtus ipſa merito nuncupatur. De qua Omerus dicit, ſimiliter et Philoſophus quinto Ethicorum, quod ipſa eſt preclariſſima Virtutum, et nec Lucifer, nec Heſperus, ut illa, eſt ammirabilis. Juſticia vero hec ſubjectum eſt omnis regalis cure, quo ſine illa Rex juſte non judicat, nec recte pugnare poteſt. Illa vero adepta perfecteque ſervata, equiſſime peragitur omne officium Regis. Unde cum perfectus uſus virtutum ſit felicitas, et juſticia humana, quæ non niſi per legem perfecte docetur, nedum ſit virtutis effectus, ſed et omnis virtus: ſequitur, quod juſticia fruens felix per legem eſt, quo et per eam ipſe fit beatus, cum idem ſit beatitudo et felicitas in hac fugaci vita, cujus et per juſticiam ipſe ſummum habet bonum. Tamen non niſi per gratiam lex poterit iſta operari, neque legem aut virtutem ſine gratia tu addiſcere poteris, vel appetere. Cum, ut dicit Pariſienſis in Libro ſuo de Cur Deus Homo, virtus hominis appetitiva interior per peccatum originale ita viciata eſt, ut ſibi viciorum ſuavia, et virtutum aſpera opera ſapiant. Quare, quod aliqui ad amorem, ſectationemque virtutis ſe conferunt, divine bonitatis beneficium eſt, et non humane virtutis. Num tunc leges, que preveniente et comitante gratia, omnia premiſſa operantur, toto conamine addiſcende ſunt? Dum felicitatem, que ſecundum Philoſophum eſt finis et complementum humani deſiderii, earum apprehenſor obtinebit, quo et beatus ille erit in hac vita, ejus poſſidens ſummum bonum. Vere, etſi non hec te moveant, qui regnum recturus es, movebunt te et arctabunt ad diſciplinam legis Prophete verba dicentis: "Erudimini qui judicatis terram:" non enim ad erudicionem artis factive, aut mechanice, hic movet Propheta: Cum non dicat, erudimini, qui colitis terram, nec ad erudicionem ſciencie tantum theorice, quamvis oportuna fuerit incolis terre, quia generaliter non dicit, erudimini qui inhabitatis terram, ſed ſolum ad diſciplinam legis, qua judicia redduntur, Reges invitat Propheta in hiis verbis, cum ſpecialiter ipſe dicat, "Erudimini qui judicatis terram." Et ſequitur, "Ne quando iraſcatur Dominus, et pereatis de via juſta." Nec ſolum legibus, quibus juſticiam conſequeris, Fili Regis, imbui te jubet ſacra Scriptura, ſed et ipſam juſticiam diligere tibi alibi precipit, cum dicat, "Diligite juſticiam qui judicatis terram." (Sapientie capitulo primo.)

Cap. V.

Hic probat quod legis ignorancia cauſat contemptum ejus.

SED quomodo juſticiam diligere poteris, ſi non primo legum ſcienciam, quibus ipſa cognoſcatur, apprehenderis? Dicit namque Philoſophus, quod nichil amatum niſi cognitum. Quare Fabius Orator ait, quod felices eſſent artes ſi de illis ſoli artifices judicarent. Ignotum vero non ſolum non amari, ſed et ſperni ſolet. Quo poeta quidam ait,

Omnia que neſcit, dicit ſpernenda colonus.

Et non coloni ſolum vox hec eſt, ſed et doctorum peritiſſimorum. Nam ſi ad Philoſophum Naturalem, qui in mathematica nunquam ſtuduit, Mathafiſicus dicat quod ſcientia ſua conſiderat res ſeparatas ab omni materia et motu ſecundum eſſe et ſecundum rationem: vel Mathematicus dicat, quod ſua ſciencia conſiderat res conjunctas materie et motui, ſecundum eſſe, ſed ſeparatas ſecundum racionem: ambos hos, licet philoſophos, Philoſophus ille Naturalis, qui nunquam novit res aliquas ſeparatas a materia et motu, eſſencia vel racione, ſpernet, eorumque ſciencias, licet ſua ſciencia nobiliores, ipſe deridet, non alia ductus cauſa, niſi quia eorum ſciencias ipſe penitus ignorat. Sic et tu, Princeps, legis Anglie peritum miraberis, ſi dicat, quod frater fratri ſibi nequaquam uterino non ſuccedet in hereditate paterna, ſed pocius hereditas illa ſorori integri ſanguinis ſui deſcendet, aut capitali domino feodi accidet ut eſchaeta ſua; cum cauſam hujus legis tu ignoras. Quare et vulgariter dicitur quod Ars non habet inimicum niſi ignorantem.

Sed abſit a te, Fili Regis, ut inimiceris legibus regni, quo tu ſucceſſurus es, vel ut eas ſpernas, cum juſticiam quam leges revelant diligere predicta Sapientie lectio te erudiat. Iterum igitur atque iterum, Princeps inclytiſſime, te adjuro, ut leges regni Patris tui, cui ſucceſſurus es, addiſcas; nedum ut inconveniencias has tu evites: ſed quia mens humana, que naturaliter bonum appetit, et nihil poteſt appetere, niſi ſub ratione boni, mox ut per doctrinam bonum apprehenderit, gaudet et illud amat, ac quanto deinceps illud plus recordatur, tanto amplius delectatur in eodem; quo doceris quod ſi leges predictas, quas jam ignoras, intellexeris per doctrinam, cum optime ille ſint, amabis eas; et quanto plus eaſdem mente pertractaveris, tanto eiſdem delectabilius tu frueris.

Nam omne, quod amatur, uſu trahit amatorem ſuum in naturam ejus. Unde, ut dicit Philoſophus, "uſus altera fit natura." Sic ramunculus piri ſtipiti pomi inſertus, poſtquam coaluerit, ita pomum trahit in naturam piri, ut ambe deinceps merito pirus appellentur, fructuſque producant piri. Sic et uſitata virtus habitum generat, ut utens ea deinde a virtute illa denominetur, quo modeſtia preditus, uſu modeſtus nominatur, continentia

continens, et ſapientia ſapiens. Quare et tu, Princeps, poſtquam juſticia delectabiliter functus fueris, quo eam indueris in habitum, merito legis denominaberis Juſtus, cujus rei gratia tibi dicetur, "Dilexiſti juſticiam, quo et odiſti iniquitatem, propterea unxit te Dominus Deus tuus oleo letitie pre conſortibus tuis regibus terre."

Cap. VI.

Hic ejilogat Cancellarius tacius perſuaſionis ſue effectum.

NONNE tunc, Princeps ſereniſſime, hec te ſatis concitant ad legis rudimenta? cum per eam juſticiam induere valeas; quo et appellaberis Juſtus, ignorancie quoque legis evitare poteris ignominiam, ac per legem felicitate fruens, beatus eſſe poteris in hac vita, et demum filiali timore indutus, qui Dei ſapientia eſt, caritatem, que amor in Deum eſt, imperturbatus conſequeris; qua Deo adherens per Apoſtoli ſententiam "Fies unus Spiritus cum eo."

Sed quia iſta, ſine gratia, lex operari nequit, tibi illam ſuper omnia implorare neceſſe eſt; Legis quoque Divine et Sanctarum Scripturarum indagare ſcienciam tibi congruit.

Cum dicat Scriptura Sacra, quod "Vani ſunt omnes, in quibus non ſubeſt ſcientia Dei." (Sapientie, XIII. Cap.)

His igitur, Princeps, dum adoleſcens es, et anima tua velut tabula raſa, depinge eam, ne in futurum ipſa figuris minoris frugi delectabilius depingatur. Quia etiam (ut Sapiens quidam ait.)

"Quod nova teſta capit, inveterata ſapit."

Quis artifex tam negligens profectûs ſue prolis eſt, ut non eam, dum pubeſcit, artibus inſtruat, quibus poſtea vite ſolacia nanciſcatur? Sic lignarius faber ſecare dolabra, ferrarius ferrire malleo, filium inſtruit: et quem in ſpiritualibus miniſtrare cupit, literis imbui facit: ſic et Principi Filium ſuum, qui poſt eum populum regulabit, legibus inſtrui dum minor eſt, convenit. Qualiter ſi fecerint Rectores orbis, mundus iſte ampliori, quam jam eſt, juſticia regeretur, quibus, ſi tu, ut jam hortor, facias exemplum non minimum miniſtrabis.

Cap. VII.

Jam Princeps ſe reddit ſtudio legum, licet quibuſdam adhuc ſcrupuloſis inquietetur.

SILENTE extunc Cancellario, Princeps ipſe ſic exorſus eſt: Viciſti me, Vir egregie, ſuaviſſima oracione tua, qua et animum meum ardore non minimo legis feciſti ſitire documenta. Sed tamen duobus me huc illucque agitantibus, animus ipſe affligitur: ut tanquam in turbido mari cimba neſciat quorſum dirigere proras. Unum eſt, dum recolit quot annorum curriculis leges, addiſcentes earum ſtudio ſe conferunt, antequam

sufficientem earundem periciam nanciscantur, quo timet animus ipse ne consimiliter ego preteream annos juventutis mee. Alterum est, an Anglie legum vel Civilium, que per orbem percelebres sunt, studio operam dabo. Nam non nisi optimis legibus populum regere licet, eciam ut dixit Philosophus, "Natura deprecatur optima." Quare libenter super hiis, quid tu consulis, auscultarem. Cui Cancellarius. Non sunt hec, Fili Regis, tantis celata misteriis ut deliberacione egeant ingenti, quare quid in hiis michi visum est prodere non differam.

Cap. VIII.

Cito adquiritur tanta scientia legum quanta principi necessaria est.

PHILOSOPHUS in primo Physicorum dicit, quod "tunc unumquodque scire arbitramur, cum causas et principia ejus cognoscamus usque ad elementa." Super quem textum Commentator dicit, quod Aristoteles per principia intellexit causas efficientes, per causas intellexit causas finales, et per elementa materiam et formam. In legibus vero non sunt materia et forma, ut in phisicis et compositis. Sed tamen sunt in eis elementa quedam, unde ipse profluunt, ut ex materia et forma, que sunt Consuetudines, Statuta, et Jus Nature, ex quibus sunt omnia jura regni; ut ex materia et forma sunt queque naturalia; et ut ex literis, que etiam elementa appellantur, sunt omnia que leguntur. Principia autem, que Commentator dicit esse causas efficientes, sunt quedam Universalia, que in Legibus Anglie docti, similiter et mathematici, Maximas vocant: Rhetorici paradoxas: et Civiliste regulas juris. Ipsa revera non argumentorum vi, aut demonstracionibus logicis dignoscuntur, sed ut secundo Posteriorum docetur, inductione, via sensus et memorie adipiscuntur. Quare et primo Physicorum Philosophus dicit, quod "principia non fiunt ex aliis, neque ex alterutis, sed ex illis alia fiunt." Quo primo Topicorum scribitur, quod "unumquodque principiorum est sibi ipsi fides." Quare, "cum negantibus ea, dicit Philosophus, non est disputandum," quia, ut scribitur VI. Ethicorum, "Ad principia non est ratio." Igitur principiis imbuendi sunt, quiqui gliscunt aliquas intelligere facultates. Ex eis etenim revelantur cause finales, ad quas, racionis ductu, per principiorum agnicionem pervenitur; unde, his tribus, viz. principiis, causis, et elementis ignoratis, scientia, de qua ipsa sunt, penitus ignoratur. Et hiis cognitis, etiam scientiam illam cognitam esse, non determinate tamen, sed in confuso et universali, arbitratur.

Sic legem Divinam nos nosse indicamus, dum Fidem, Caritatem, et Spem, Sacramenta quoque Ecclesie ac Dei Mandati, nos intelligere sencianus; cetera Theologie misteria Ecclesie presidentibus relinquentes. Quare Dominus Discipulis suis ait, "Vobis datum est nosse misterium regni Dei, ceteris autem in parabolis, ut videntes non videant, &c." Et Apostolus dixit, "Non plus sapere quam oportet sapere." Et alibi, "Non alta sapientes." Sic et tibi, Princeps, necesse non erit misteria legis Anglie longo discipline rimare, suffi-

ciet tibi ut in Grammatica tu profeciſti, eciam et in Legibus proficias. Grammatice vero perfeccionem, que ex Ethimologia, Ortographia, Proſodia, et Diaſentetica,[1] quaſi ex quatuor fontibus profluit, non ſpecie tenus induiſti, et tamen grammatica ſufficienter eruditis es, ita ut merito Grammaticus denomineris. Conſimiliter quoque denominari Legiſta mereberis, ſi legum principia et cauſas, uſque ad climenta, diſcipuli more indagaveris. Non enim expediet tibi, propria ſenſus indagine legis ſacramenta ſcrutari, ſed relinquantur illa Judicibus tuis et Advocatis, qui in Regno Anglie Servientes ad Legem appellantur, ſimiliter et aliis juris peritis, quos Apprenticios vulgus denominat: melius et enim per alios, quam per teipſum judicia reddes, quo, proprio ore, nullus regum Anglie judicium proferre uſus eſt; et tamen ſua ſunt omnia judicia regni, licet per alios ipſa reddantur; ſicut et judicum omnium ſententias Joſaphat aſſeruit eſſe judicia Dei. Quare, tu Princeps ſereniſſime, parvo tempore, parva induſtria, ſufficienter eris in legibus regni Anglie eruditus, dummodo ad ejus apprehenſionem tu conferas animum tuum. Dixit namque Seneca in Epiſtolâ ad Lucillum, "Nihil eſt quod pertinax opera, et diligens cura, non expugnat." Noſco namque ingenii tui perſpicacitatem, quo audacter pronuncio, quod in legibus illis, licet earum peritia, qualis judicibus neceſſaria eſt, vix viginti annorum lugubris[2] adquiratur, tu doctrinam Principi congruam in anno uno ſufficienter nanciſceris, nec interim militarem diſciplinam, ad quam tam ardenter anhelas, negliges; ſed ea, recreacionis loco, etiam anno illo, tu ad libitum perfrueris.

Cap. IX.

Rex politicè dominans non poteſt mutare leges regni ſui.

SECUNDUM vero, Princeps, quod tu formidas, conſimili nec majori opera elidetur. Dubitas nempe, an Anglorum legum vel Civilium ſtudio te conferas, dum Civiles ſupra humanas cunctas leges alias, fama per orbem extollat gloriosa. Non te conturbet, Fili Regis, hec mentis evagatio: Nam non poteſt Rex Anglie ad libitum ſuum leges mutare regni ſui, principatu namque nedum regali, ſed et politico, ipſe ſuo populo dominatur. Si regali tantum ipſe preeſſet eis, leges regni ſui mutare ille poſſet, tallagia quoque et cetera onera eis imponere ipſis inconſultis, quale dominium denotant leges Civiles, cum dicant, "Quod Principi placuit, legis habet vigorem." Sed longe aliter poteſt rex politice imperans genti ſue, quia nec leges ipſe ſine ſubditorum aſſenſu mutare poterit, nec ſubjectum populum renitentem onerare impoſicionibus peregrinis, quare populus ejus libere fruetur bonis ſuis, legibus quas cupit regulatus, nec per regem ſuum, aut quemvis alium depilatur; conſimiliter tamen plaudit populus, ſub rege regaliter tantum principante,

[1] "Syntaxi" in Whitechurch's Edition. For the word, see Duffenbach's Supplement to Ducange.

[2] "Lugubrere" ſtudere de nocte. Ducange.

dummodo in tirannidem ipſe non labatur. De quali rege dixit Philoſophus III. Politicorum, quod "melius eſt civitatem regi viro optimo, quam lege optima." Sed quia non ſemper contingit preſidentem populo hujuſmodi eſſe virum, Sanctus Thomas in libro quem regi Cipri ſcripſit, de Regimine Principum, optare cenſetur, regnum ſic inſtitui, ut rex non libere valeat populum ſuum tirannide gubernare, quod ſolum fit, dum poteſtas regia lege politica cohibetur: Gaude igitur, Princeps optime, talem eſſe legem regni in quo tu ſucceſſurus es, quia et tibi, et populo, ipſa ſecuritatem preſtabit non minimam et ſolamen. Tali lege, ut dicit idem Sanctus, regulatum fuiſſet totum genus humanum, ſi in Paradiſo Dei mandatum non preteriiſſet: tali etiam lege regebatur Sinagoga, dum ſub ſolo Deo rege, qui eam in regnum peculiare adoptabat, illa militabat; ſed demum ad ejus petitionem, rege homine ſibi conſtituto, ſub lege tantum regali ipſa deinceps humiliata eſt. Sub qua tamen dum optimi reges ſibi prefuerunt ipſa plauſit, et dum diſcoli ei preeſſebant ipſa inconſolabiliter lugebat, ut Regum Libri hæc diſtinccius manifeſtant. Tamen quia de materia iſta in Opuſculo, quod tui contemplacione de Natura Legis Natura exaravi, ſufficienter puto me diſceptaſſe, plus inde loqui jam deſiſto.

Cap. X.

Interrogacio Principis.

HUNC Princeps illico ſic ait. Unde hoc, Cancellarie, quod rex unus plebem ſuam regaliter tantum regere valeat, et regi alteri poteſtas hujuſmodi denegatur? Equalis faſtigii cum ſint reges ambo, cur in poteſtate ſint ipſi diſpares nequeo non admirari.

Cap. XI.

Renuncio ad alias tractata.

CANCELLARIUS. Non minoris eſſe poteſtatis regem politice imperantem, quam qui ut vult regaliter regit populum ſuum, in ſupradicto Opuſculo ſufficienter eſt oſtenſum; diverſe tamen autoritatis eos eſſe in ſubditos ſuos ibidem aut jam nullatenus denegavi; cujus diverſitatis cauſam, ut potero, tibi pandam.

Cap. XII.

Qualiter regna tantùm regaliter regulata primitus inchoata ſunt.

HOMINES quondam potencia prepollentes, avidi dignitatis et glorie, vicinas ſepe gentes ſibi viribus ſubjugarunt, ac ipſis ſervire, obtemperare quoque juſſionibus ſuis compulerunt, quas juſſiones extunc leges hominibus illis eſſe ipſi fuerunt. Quarum perpecione diutina, ſubjectus ſic populus, dum per ſubjicientes a ceterorum injuriis

defendebatur, in ſubjiciencium dominium conſenſerunt: opportunius eſſe arbitrantes, ſe unius ſubdi imperio, quo erga alios defenderentur, quam omnium eos infeſtare volencium oppreſſionibus exponi. Sic que regna quedam inchoata ſunt, et ſubjicientes illi, dum ſubjectum populum ſic rexerunt, a regendo ſibi nomen *regis* uſurparunt, eorum quoque dominatus tantum regalis dictus eſt. Sic Nembroth primus ſibi regnum comparavit, tamen non *rex* ipſe, ſed "robuſtus venator coram Domino" Sacris Literis appellatus eſt: quia ut venator feras libertate fruentes, ipſe homines ſibi compeſcuit obedire. Sic Belus Aſſirius, et Ninus quam magnam Aſie partem dicioni ſue ſubegerunt; ſic et Romani orbis imperium uſurparunt; qualiter fere in omnibus gentibus regna inchoata ſunt. Quare, dum Filii Iſrael regem poſtulabant, ſicut tunc habuerunt omnes gentes, Dominus inde offenſus legem regalem eis per Prophetam explanari mandavit; que non aliud fuit, quam placitum regis eis preeſſentis, ut in primo Libro Regum plenius edocetur. Habes nunc ni fallor, Princeps, formam exordii regnorum regaliter poſſeſſorum. Quare, quomodo regnum politice regulatum primitus erupit eciam propalare conabor, ut cognitis amborum regnorum initiis, cauſam diverſitatis quam tu queris inde elicere tibi facillimum ſit.

Cap. XIII.

Qualiter regna politicè regulata primitus inceperunt.

SANCTUS AUGUSTINUS, in Libro XIX. de Civitate Dei, Cap. XXIII. dixi quod "populus eſt cetus hominum, juris conſenſu et utilitatis communione ſociatus." Nec tamen populus hujuſmodi dum acephalus, id eſt ſine capite eſt, corpus vocari meretur. Quia ut in naturalibus, capite detruncato, reſiduum non corpus, ſed truncum appellamus; ſic et in politicis, ſine capite communitas nullatenus corporatur. Quo primo politicorum dixit Philoſophus, quod "quandocunque ex pluribus conſtituitur unum inter illa, unum erit regens, et alia erunt recta." Quare populum, ſe in regnum aliudve corpus politicum erigere volentem, ſemper oportet unum preficere tocius corporis illius regitivum, quem per analogiam in regnis, a regendo *regem* nominare ſolitum eſt. Hoc ordine, ſicut ex embrione corpus ſurgit phiſicum uno capite regulatum, ſic ex populo erumpit regnum, quod corpus extat miſticum uno homine ut capite gubernatum. Et ſicut in naturali corpore, ut dixit Philoſophus, cor eſt primum vivens, habens in ſe ſanguinem quem emittit in omnia ejus membra, unde illa vegetantur et vivunt; ſic in corpore politico intencio populi primum vivens eſt, habens in ſe ſanguinem, viz. proviſionem politicam utilitati populi illius, quam in caput et in omnia membra ejuſdem corporis ipſa tranſmittit, quo corpus illud aliter et vegetatur. Lex vero, ſub qua cetus hominum populus efficitur, nervorum corporis phiſici tenet racionem; quia ſicut per nervos compago corporis ſolidatur, ſic per legem, quæ a *ligando* dicitur, corpus hujuſmodi miſticum ligatur et ſervatur in unum, et ejuſdem corporis membra ac oſſa, que

veritatis qua communitas illa ſuſtentatur ſoliditatem denotant, per legem, ut corpus naturale per nervos propria retinent jura. Et ut non poteſt caput corporis phiſici nervos ſuos commutare, neque membris ſuis proprias vires, et propria ſanguinis alimenta denegare, nec rex, qui caput corporis politici eſt, mutare poteſt leges corporis illius, nec ejuſdem populi ſubſtantias proprias ſubtrahere, reclamantibus eis aut invitis. Habes ex hoc jam, Princeps, inſtitutionis regni politici formam, ex qua metiri poteris poteſtatem, quam rex ejus in leges ipſius aut ſubditos valeat exercere. Ad tutelam namque legis ſubditorum, ac eorum corporum et bonorum Rex hujuſmodi erectus eſt, et hanc poteſtatem a populo effluxam ipſe habet, quo ei non licet poteſtate alia ſuo populo dominari. Quare ut poſtulationi tue, qua certiorari cupis, unde hoc provenit quod poteſtates regum tam diverſimode variantur, ſuccinctius ſatisfaciam. Firme conjector, quod diverſitates inſtitucionum dignitatum illarum, quas propalavi, predictam diſcrepanciam ſolummodo operantur, prout rationis diſcurſu tu ex premiſſis poteris exhaurire. Sic namque regnum Anglie, quod ex Bruti comitiva Trojanorum, quam ex Italie et Græcorum finibus perduxit, in dominium politicum et regale prorupit: ſic et Scotia, que ei quondam ut ducatus obedivit, in regnum crevit politicum et regale. Alia quoque quam plurima regna nedum regaliter, ſed et politice regulari, tali origine jus ſortita ſunt. Unde Diodorus Siculus in ſecundo libro Hiſtoriarum Priſcarum, de Egipciis ſic ſcribit: "Suam primum Egipcii reges vitam non aliorum regnancium quibus voluntas pro lege eſt traducebant licentia, ſed veluti privati tenebantur legibus; neque id egre ferebant, exiſtimantes parendo legibus ſe beatos fore; nam ab hiis, qui ſuis indulgerent cupiditatibus, multa cenſebant fieri, quibus dampna periculaque ſubirent." Et in quarto libro ſic ſcribit: "Aſſumptus in regem Ethiopum vitam ducit ſtatutam legibus, omniaque agit juxta patrios mores, neque premio neque pena afficiens quemquam preter per traditam a ſuperioribus legem." Conſimiliter loquitur de rege Saba in felici Arabia, et aliis quibuſdam regibus, qui priſcis temporibus feliciter regnabant.

Cap. XIV.

Princeps hic ſuccinctè epilogat quod Cancellarius diffuſè antea declaravit.

Cui Princeps; Effugaſti, Cancellarie, declarationis tue lumine tenebras quibus obducta erat acies mentis mee, quo clariſſime jam conſpicio, quod non alio pacto gens aliqua, proprio arbitrio, unquam ſe in regnum corporavit, niſi ut per hoc ſe et ſua quorum diſpendia formidabant, tucius quam antea poſſiderent; quali propoſito genus hujuſmodi fraudaretur, ſi exinde facultates eorum eripere poſſit rex ſuus, quod antea facere ulli hominum non licebat. Et adhuc gravius multo populus talis lederetur, ſi deinde peregrinis legibus, ipſis forſan exoſis, regerentur. Et maxime, ſi legibus illis eorum minoraretur ſubſtancia, pro cujus vitanda jactura, ut pro ſuorum tutela corporum, ipſi ſe regis imperio arbitrio proprio ſubmiſerunt, non potuit revera poteſtas hujuſmodi ab ipſis erupiſſe; et tamen

ſi non ab ipſis, rex hujuſmodi ſuper ipſos nullam obtineret poteſtatem. E regione, aliter eſſe concipio de regno, quod regis ſolum autoritate et potencia incorporatum eſt; quia non alio pacto gens talis ei ſubjecta eſt, niſi ut ejus legibus, que ſunt illius voluntatis placita, gens ipſa que eodem placito regnum ejus effecta eſt, obtemperaret et regeretur. Neque, Cancellarie, a mea hucuſque memoria elapſum eſt, quod alias in tractatu de Natura Legis Nature, horum duorum regum equalem eſſe potentiam doctis racionibus oſtendiſti, dum poteſtas qua eorum alter perperam agere liber eſt, libertate hujuſmodi non augetur; ut poſſe langueſcere morive, potentia non eſt, ſed propter privationem in adjecto, impotentia pocius denominandum eſt. Quia, ut dicit Boecius, "Potencia non eſt niſi ad bonum;" quo poſſe male agere, ut poteſt rex regaliter regnans liberius quam rex politice dominans populo ſuo, potius ejus poteſtatem minuit, quam augmentat. Nam ſancti ſpiritus, jam confirmati in Gloria, qui peccare nequeunt, potenciores nobis ſunt qui ad omne facinus liberis gaudemus habenis. Solum michi jam ſupereſt a te ſciſcitandum ſi lex Anglie, ad cujus diſciplinatum me provocas, bona et efficax eſt ad regimen regni illius, ut lex Civilis, qua ſacrum regulatur imperium, ſufficiens arbitratur ad orbis regimen univerſi? Si me in hoc, demonſtrationibus congruis, indubium reddideris, ad ſtudium legis illius illico me conferam, nec te poſtulationibus meis ſuper hiis amplius fatigabo.

Cap. XV.

Omnes leges ſunt jus naturæ, conſuetudines, vel ſtatuta.

CANCELLARIUS. Memorie tue, Princeps optime, commendaſti, quæ tibi hucuſque ſuggeſſi, quare et que jam interrogas, meritus es ut pandam. Scire te igitur volo, quod omnia jura humana, aut ſunt lex nature, conſuetudines, vel ſtatuta, que et conſtitutiones appellantur. Sed conſuetudines, et legis nature ſententie, poſtquam in ſcripturam redacte, et ſufficienti auctoritate principis promulgate fuerint, ac cuſtodiri jubeantur, in conſtitutionem ſive ſtatutorum naturam mutantur, et deinde penalius quam antea ſubditos principis ad earum cuſtodiam conſtringunt, ſeveritate mandati illius. Qualis eſt legum Civilium pars non modica, que a Romanorum principibus in magnis voluminibus redigitur, et eorum auctoritate obſervari mandatur. Unde legis Civilis, ut cetera imperatorum ſtatuta, jam pars illa nomen ſortita eſt. Si igitur in his tribus, quaſi omnis juris fontibus, legis Anglie preſtantiam probaverim prefulgere, legem illam bonam et efficacem ad regni illius regimen etiam comprobavi. Deinde, ſi eam ad ejuſdem regni utilitatem, ut leges Civiles ad imperii bonum, accommodam eſſe lucide oſtenderim, nedum tunc legem illam preſtantem, ſed et, ut leges Civiles, electam (ut tu optas) eciam patefeci. Igitur hec duo tibi oſtendere ſatagens, ſic progredior.

Cap. XVI.

Lex nature eſt idem in omnibus regionibus.

REGES Anglie in his, que ipſe fanciunt, legis nature ratione non meliores pejoreſve ſunt in judiciis ſuis, quam in conſimilibus ſunt omnes leges ceterarum nationum. Quia, ut dixit Philoſophus, V. Ethicorum, "Jus naturale eſt, quod apud omnes homines eandem habet poteſtatem," quare de ea amplius diſceptare non expedit. Sed quales ſunt Anglie conſuetudines ſimiliter et ſtatuta, eſt a modo perſcrutandum, et primo conſuetudinum illarum viſitabimus qualitates.

Cap. XVII

Conſuetudines Anglie antiquiſſime ſunt, et per quinque naciones viciſſim uſitate et accepte.

REGNUM Anglie primo per Britones inhabitatum eſt; deinde, per Romanos regulatum; iterumque per Britones, ac deinde per Saxones poſſeſſum, qui nomen ejus ex Britannia in Angliam mutaverunt. Et tunc per Danos idem regnum parumper dominatum eſt, et iterum per Saxones, ſed finaliter per Normannos, quorum propago regnum illud obtinet in preſenti. Et in omnibus nationum harum et regum earum temporibus, regnum illud eiſdem, quibus jam regitur, conſuetudinibus continue regulatum eſt. Que, ſi optime non extitiſſent, aliqui regum illorum juſtitia, ratione, vel affectione concitati eas mutaſſent, aut omnino deleviſſent; et maxime Romani, qui legibus ſuis quaſi totum orbis reliquum judicabant. Similiter et alii regum predictorum, qui ſolum gladio regnum Anglie poſſiderunt, quo et potentia ſimili ipſi leges ejus exinaniſſe valuerunt. Neque enim tantorum temporum curriculis, leges Civiles in quantum Romanorum inveterate ſunt, neque Venetorum leges, que ſuper alias antiquitate divulgantur, quorum tum inſula in initio Britonum inhabitata non fuit, ſicut nec Roma condita, nec ullorum mundi regnorum deicolarum leges tanto evo inolite ſunt. Quare non bonas, immo non optimas eſſe Anglorum conſuetudines, ſicut non dicere, ita nec ſuſpicari fas eſt.

Cap. XVIII.

Hic oſtendit quali gravitate ſtatuta eduntur in Anglia.

STATUTA tunc Anglorum bona ſint necne, ſolum reſtat explorandum. Non enim emanant illa a principis ſolum voluntate, ut leges in regnis que tantum regaliter gubernantur, ubi quandoque ſtatuta ita conſtituentis procurant commodum ſingulare, quod in ejus ſubditorum ipſa redundant diſpendium et jacturam; quandoque etiam

inadvertentia principum hujuſmodi, et ſibi conſulencium inercia, ipſa tam inconſulte eduntur, quod corruptelarum nomina, pocius quam legum, illa merentur. Sed non ſic Anglie ſtatuta oriri poſſunt, dum nedum principis voluntate, ſed et tocius regni aſſenſu, ipſa conduntur, quo populi leſuram illa efficere nequeunt, vel non eorum commodum procurare. Prudencia, etiam et ſapiencia neceſſario ipſa eſſe referta putandum eſt, dum non unius, aut centum ſolum conſultorum virorum prudencia, ſed pluſquam trecentorum electorum hominum, quali numero olim Senatus Romanorum regebatur, ipſa edita ſunt, ut hii, qui parliamenti Anglie formam, convocationis quoque ejus ordinem et modum noverunt, hec diſtinctius referre norunt. Et ſi ſtatuta hec tanta ſolempnitate et prudentia edita, efficacie tante, quante conditorum cupiebat intencio, non eſſe contingant, concito reformari poſſunt ipſa; et non ſine communitatis et procerum regni illius aſſenſu, quali ipſa primitus emanarunt. Patent igitur jam tibi, Princeps, legum Anglorum ſpecies omnes. Earum quoque qualitates, ut ſi bone ipſe ſint, metiri tu poteris prudencia tua, comparatione eciam aliarum legum, et cum nullam tante preſtantie in orbe reperies, eas nedum bonas, ſed tibi optabiliſſimas, fore, neceſſario confiteberis.

Cap. XIX.

Hic ordinat modum quo Civilium et Anglicarum legum qualitas diſcerni poterit.

SOLUM jam unum de his, quibus agitatur animus tuus, reſtat explanandum, viz. An, ut Civiles, ita et Anglorum leges, frugi ſint et efficaces iſti Anglie regno, ut ille imperio, etiam et accommode judicari mereantur. Comparationes vero, Princeps, ut te aliquando dixiſſe recolo, odioſe reputantur; quo eas aggredi non delector; tu, an equalis ſint ambe leges meriti, unave altera celſius preconium mereatur, non ex meo judicio, ſed ex his, in quibus earum differunt ſentencie, efficacius carpere poteris argumentum. Nam ubi conveniunt leges ambe, equalis laudis ipſe ſunt; ſed in caſibus in quibus ipſe diſcrepant, preſtantioris legis preconia digna penſatione refulgent. Quare caſus hujuſmodi aliquos jam in medium proferemus, ut que legum illarum eos juſtius meliuſque definiat equa lance valeas ponderare. Et primo, ex caſibus maximi ponderis exemplum proponamus.

Cap. XX.

Caſus primus in quo variant leges Civiles et Anglicane.

SI coram Judice contendentes ad litis perveniant conteſtationem, ſuper materia facti, quam legis Anglie periti Exitum Placiti appellant, exitus hujuſmodi veritas per leges Civiles, teſtium depoſitione probari debet, in qua duo teſtes idonei ſufficiunt. Sed per leges Anglie veritas illa non niſi duodecim hominum de vicineto ubi factum hujuſmodi ſup-

ponitur, ſacramento, judici conſtare poterit. Queritur igitur, quis horum duorum proceſſuum tam diverſorum rationabilior cenſeri debeat, et efficacior ad veritatem que ſic queritur revelandam; quia lex, que eam cercius meliuſque oſtendere poteſt, preſtancior in hoc eſt lege altera, que non tante efficacie eſt et virtutis. Quare in hujus rei indagine ſic procedimus.

Cap. XXI.

Hic deſignantur mala quæ proveniunt ex lege que non aliàs quam per teſtes probaciones admittat.

DER Leges Civiles, pars que in litis conteſtatione affirmativam dicit teſtes producere debet, quos ipſe ad libitum ſuum nominabit. Negativa autem probari non poteſt, videlicet, directe, licet poſſit per obliquum. Exilis quippe creditur eſſe potencie, minoris quoque induſtrie, qui de omnibus quos noſcit hominibus duos reperire nequit, ita conſcientia et veritate vacuos, ut timore, amore, vel commodo, omni velint contraire veritati. Hos poteſt tunc ipſe in teſtimonium producere in cauſa ſua. Et ſi contra eos pars altera dicere velit, vel contra eorum dicta, non ſemper continget eos, eorum quoque mores aut facta, apud contradicere volentem, agnoſci, ut ex eorum ſeditate et viciis teſtes illi poſſint reprobari. Et dum eorum dicta affirmativam contineant, non facile poterunt illa per circumſtantias aut obliqua alia improbari. Quis tunc poterit ſuorum aut ſui ipſius, ſub lege tali, vivere ſecurus, dum cuilibet ſibi inimicari volenti lex tale preſtat ſubſidium? Et qui iniqui duo tam incauti ſunt, quod facti, de quo ipſi examinabuntur in judicio, non, antequam in teſtes producantur, occulte fingant imaginem et figuram, componant quoque eidem omnes circumſtantias quales ſibi affuiſſent ſi illud in veritate conſtitiſſet? "Prudentiores namque," ut dixit Dominus, "ſunt filii hujus mundi quam filii lucis." Sic Jeſabell ſceleratiſſima teſtes duos, filios Beliall, contra Nabot in judicio produxit, quo ipſe vitam perdidit, et Achab rex ejus vineam poſſidebat. Sic duorum ſenum etiam judicum teſtimonio, mortua fuiſſet pro adulterio uxor caſtiſſima Suſanna, ſi non eam miraculoſe liberaſſet Dominus inexcogitabili prudentia, quam a natura non habuit puer minor, nondum etate provectus. Et ſi ipſos, depoſitione ſua varia, convicerat puer Daniell eſſe falſarios, quis, niſi ſolus Dominus, noviſſe poterit eos in dictis ſuis taliter variaturos? dum, non de arboris natura, ſub qua imputatum facinus fiebat, lex aliqua eos artabat reminiſci. Quia teſtes ſceleris cujuſque conſiderare non putantur omnia umbracula et cetera vicina illi facto, que ad aggravationem vel deteccionem criminis illius minime operantur. Sed dum de arborum ſpeciebus judices illi nequam ultro deponentes variabant, eorum dicta ipſos veritatis fuiſſe prevaricatores demonſtrabant; quo et talionis penam merito incurrerunt. Noſti et tu, Princeps divine, qualiter jam tarde Magiſter Johannes Fringe, qui poſtquam annis tribus ſacerdotali functus eſt officio, duorum iniquorum depoſitione, qui eum antea juvenculam quandam affidaſſe teſtati ſunt, ſacrum preſbyteratus

ordinem relinquere compulſus eſt, et matrimonium cum femina illa conſummare. Cum qua poſtquam annis quatuordecim moratus, ſobolem ſeptimam ſuſcitaverat, demum de crimine leſe majeſtatis in tuam celſitudinem conjurato convictus, ſubornatos fuiſſe teſtes illos et falſum dixiſſe teſtimonium, in mortis ſue articulo coram omni populo faſſus eſt. Qualiter et ſepe perverti judicia falſorum teſtium medio, etiam ſub optimis judicibus, non eſt tibi inauditum, nec incognitum mundo, dum ſcelus illud (proh dolor!) creberrime committatur.

Cap. XXII.

Vide hic de inhumanitate torturarum.

NON igitur contenta eſt lex Francie in criminalibus ubi mors imminet reum teſtibus convincere, ne falſidicorum teſtimonio ſanguis innocens condempnetur; ſed mavult lex illa reos tales torturis cruciari, quouſque ipſi eorum reatum confiteantur, quam teſtium depoſitione, qui ſepe paſſionibus iniquis, et quandoque ſubornatione malorum, ad perjuria ſtimulantur. Quali caucione et aſtucia, criminoſi etiam et de crimine ſuſpecti, tot torturarum in regno illo generibus affliguntur, quod faſtidit calamus ea literis deſignare. Quidam vero in equueleis extenduntur, quo rumpuntur nervi, et vene in ſanguinis fluenta prorumpunt. Quorundam vero diverſorum ponderum pendulis diſſolvuntur compagines et juncture. Et quorundam gaggantur ora uſque dum per illa tot aquarum infundantur fluenta, ut ipſorum venter montis tumeſcat more; quo tunc venter ille, foſſorio vel ſimili percuſſus inſtrumento, per os aquam illam evomet, ad inſtar balene, que cum halecibus et aliis piſciculis mare abſorbuit, aquam deſpumat ad altitudinem arboris pini. Pudet (proh pudor!) jam penna exquiſitorum ad hec cruciatuum enarrare immania; nam eorum variatus numerus vix notari poterit magna in membrana. Leges etiam ipſe Civiles, deficiente teſtium copia in criminalibus veritatem conſimilibus extorquent tormentis. Qualiter et faciunt etiam quamplurima regna. Sed quis tam duri animi eſt, qui ſemel ab atroci tanto torculari laxatus, non pocius innocens ille omnia fateretur ſcelerum genera, quam acerbitatem ſic experti iterum ſubire tormenti, et non ſemel mori mallet, dum mors ſit ultimum terribilium, quam tociens occidi, et totidem Gehennales furias morte amariores ſuſtinere? Et nonne, Princeps, tu noviſti criminoſum quendam, qui inter tormenta hujuſmodi militem nobilem, probum, et fidelem, de prodicione quadam ſuper qua ut aſſeruit ipſi duo inſimul conjurarunt, accuſare, quod et conſtanter poſtmodum ipſe fecit, a torturis illis relaxatus, ne iterum eadem tormenta ſubiret; ſed demum, cum ex penis illus leſus uſque ad mortis articulum infirmaretur, ultimum quoque viaticum, Chriſti videlicet corpus, ſumpſiſſet, juravit tunc ſuper corpus illud, et per mortem, quam tunc protinus credidit ſe ſubiturum, militem illum innocentem fuiſſe, et immunem de omnibus in quibus eum accuſavit; tamen ait penas, in quibus ipſe tempore

delacionis ſue fuerat, ita atroces exſtitiſſe, quod priuſquam eas iterum experiretur, eciam eundem militem ille iterum accuſaret, ſimiliter et patrem proprium, licet tunc in mortis limine, quam non credidit ſe poſſe evadere, fuerit conſtitutus. Nec vero ipſe mortem quam tunc metuit evaſit, ſed demum ſuſpenſus, tempore mortis ſue, ipſum militem purgavit ab omni crimine, de quo eum defamavit. Ceterum ſi innocens aliquis non immemor ſalutis eterne, in hujuſmodi Babylonis fornace, cum tribus pueris benedicat Domino, nec mentiri velit in perniciem anime ſue, quo judex eum pronunciat innocentem, nonne eodem judicio judex ille ſeipſum reum judicat omnis ſevitie et pœnarum, quibus innocentem afflixit? O quam crudelis eſt lex talis, que dum innocentem dampnare nequit, judicem ipſa condemnat? Vero non lex ritus talis eſſe perhibetur, ſed pocius ſemita ad Gehennam. O Judex, quibus in ſcolis didiciſti te preſentem exhibere dum penas luit reus? Execuciones quippe judiciorum in criminoſos per ignobiles fieri convenit; nam earum actores infames ſolent eſſe ipſo facto, quo et ipſi deinde ad judicialem apicem redduntur indigni. Non enim per angelos, ſed per demones, exequi facit Dominus judicia ſua, reddita in dampnatos. Nec revera in Purgatorio cruciant animas quamvis predeſtinatas ad Gloriam Angeli boni, ſed mali. Maligni eciam homines ſunt, per quos Dominus in hoc mundo miſeris tribuit malum pene. Nam cum dixerat Deus iii. Regum, in capitulo viceſimo ſecundo, "Quis decipiet michi Achab?" Malus erat ſpiritus, ille, qui reſpondit, "Ego ero ſpiritus mendax in ore omnium prophetarum ejus." Non enim decuit ſpiritum bonum exequi talia, licet a Domino prodiit judicium, quod Achab mendacio deciperetur. Sed dicet judex forſan, Ego nihil egi manibus meis. Tamen eum preſentem eſſe et quod factum eſt mandato ſuo iterum atque iterum aggravare non licuit. Solum magiſter navis eſt qui eam ducit ad portum, licet ejus mandato alii agitent proram. Credo quod vulnus quo ſauciatur animus judicis penas hujuſmodi infligentis numquam in cicatricem veniet, maxime dum recolit acerbitatem penarum miſeri ſic afflicti.

Cap. XXIII.

Hic oſtendit quomodo Lex Civilis ſepè deficit in Juſticia.

PRETEREA, ſi ex contractibus, illatiſve injuriis, vel hereditatis titulo, jus accreverit homini agendi in judicio, ſi teſtes non fuerint, vel ſi qui fuerint moriantur, ſuccumbent ipſe agens in cauſa ſua, niſi jus ſuum probare poſſit ſufficientibus conjecturis quod facere crebro non contingit. Quare de dominiis et aliis poſſeſſionibus jure civili regulatis, ſimiliter et in omnibus accionibus cadentibus ſub eodem jure, acciones agencium pro defectu teſtium quam pluries ſuffocantur, ita quod earum vix pars media optatum finem ſortiatur. Qualis tunc eſt lex hujuſmodi, que injuriatis taliter deficit in juſticia reddenda? Dubito an juſta vocari mereatur, quia in eadem lege ſcribitur, quod "Juſtitia unicuique tribuit quod ſuum eſt," quod non facit lex talis.

Cap. XXIV.

Hic docet qualiter Comitatus diſtinguuntur, et Vicecomites eliguntur.

EXPOSITA jam forma, qua leges Civiles de veritate facti in judicio deducti judicem erudiunt, ſupereſt ut modum quo leges Anglie hujuſmodi facti eliciunt veritatem, eciam doceamus. Nam ambarum legum formulis contigue poſitis, qualitates earundem lucidius eminebunt. Cum dicat Philoſophus, quod "oppoſita juxta ſe poſita magis apparent." Sed in hoc, oratorum more (prohemii loco) quedam prenarrare congruet, quorum agnicione, deinde tractanda clarius patere queant; quare ſic procedimus. Regnum Anglie per Comitatus, ut regnum Francie per Ballivatus diſtinguitur, ita ut non ſit locus in Anglia, qui non ſit infra corpus alicujus Comitatus. Comitatus quoque dividuntur in Hundreda, que alicubi Wapentagia nuncupantur. Hundreda vero dividuntur per Villas, ſub quarum appellacione continentur et Burgi atque Civitates. Villarum etenim mete non muris, edificiis, aut ſtratis terminantur, ſed agrorum ambitubus, territoriis magnis, hamiletis quibuſdam, et multis aliis, ſicut aquarum, boſcorum, et vaſtorum, terminis, que jam non expedit nominibus deſignare; quia vix in Anglia eſt locus aliquis, qui non infra villarum ambitus contineatur, licet privilegiati loci quidam infra villas de eiſdem villis pars eſſe non cencentur. Preterea in quolibet comitatu eſt officiarius quidam unus, Regis Vicecomes appellatus,[1] qui inter cetera ſui officii miniſteria omnium mandata et judicia curiarum regis in comitatu ſuo exequenda exequitur, cujus officium annale eſt, quo ei poſt annum in eodem miniſtrare non licet, nec duobus tunc ſequentibus annis ad idem officium reaſſumetur. Officiarius iſte ſic eligitur. Quolibet anno in craſtino Animarum, conveniunt in ſcaccario regis omnes conſiliarii ejus tam domini ſpirituales et temporales, quam alii omnes juſticiarii, omnes barones de ſcaccario, clericus rotulorum, et quidam alii officiarii, ubi ii omnes communi aſſenſu nominant de quolibet comitatu tres milites vel armigeros, quos inter ceteros ejuſdem comitatus ipſi opinantur melioris eſſe depoſitionis et fame, et ad officium vicecomitis comitatus illius melius diſpoſitos; ex quibus Rex unum tantum eligit, quem per literas ſuas patentes conſtituit vicecomitem comitatus de quo eligitur pro anno tunc ſequente. Sed ipſe, antequam literas illas recipiat, jurabit ſuper Dei Evangelia, inter articulos alios, quod bene, fideliter, et indifferenter exercebit et faciet officium ſuum toto anno illo, neque aliquid recipiet colore aut cauſa officii ſui, ab aliquo alio quam a rege. His jam ſic preſuppoſitis, ad eorum, que querimus, indaginem procedamus.

[1] The whole text between "appellatus" in Cap. xxiv. and "alteri vel amicicia" in Cap. xxv. is wanting in the Cambridge M.S. Tanner has written on its margin, "Hic deſunt quædam."

Cap. XXV.

Qualiter Juratores eligi debent et jurari.

QUOTIESCUNQUE contendentes in Curiis Regis Anglie ad exitum placiti ſuper materia facti devenerint, concito juſticiarii per breve regis ſcribunt vicecomiti comitatus, in quo factum illud fieri ſupponitur, quod ipſe venire faciat coram eiſdem juſticiariis ad certum diem per eos limitatum, duodecim probos et legales homines, de vicineto, ubi illud factum ſupponitur, qui neutram partium ſic placitantium ulla affinitate attingunt, ad recognoſcendum ſuper eorum ſacramenta, ſi factum illud factum fuerit, ſicut una earundem partium dicit; vel non, ſicut altera pars negat. Quo adveniente die, vicecomes returnabit breve predictum coram eiſdem juſticiariis, una cum panello nominum eorum, quos ipſe ad hoc ſummonuit, quos, ſi venerint, utraque pars recuſare poterit dicendo, quod vicecomes panellum illud favorabiliter fecit pro parte altera, viz. de perſonis minus indifferentibus. Que exceptio, comperta fuerit vera per ſacramentum duorum hominum de eodem panello ad hoc per juſticiarios electorum, mox panellum illud quaſſabitur; et juſticiarii tunc ſcribent Coronatoribus ejuſdem comitatus quod ipſi novum faciant panellum. Quod cum fecerint, ſi et illud conſimiliter repertum fuerit vitiatum, etiam et illud quaſſabitur. Et tunc juſticiarii eligent duos de clericis curie illius, vel alios de eodem comitatu, qui in præſentia curie per eorum ſacramenta facient indifferens panellum, quod deinde per nullam partium illarum calumpniabitur; ſed cum venerint ſic impanellati in curia, quelibet partium excipere poteſt contra perſonam cujuſcunque eorum, ſicut et poteſt in omni caſu et omni tempore, quo aliquis qualitercunque impanellatus comparuerit in curia ſuper veritate exitus hujuſmodi juraturus, dicendo, quod impanellatus ille eſt conſanguineus vel affinis parti alteri, vel amicicia quacunque tali ſibi conjunctus, quod indifferens ipſe non eſt oſtendere inter eos veritatem. Qualium excepcionum tot ſunt genera et ſpecies, quod non licet eas brevi explicare ſermone. Quarum ſi aliqua reperta fuerit vera, non tunc jurabitur ille contra quem excepcio illa proponitur, ſed cancellabitur nomen ejus in panello. Sic quoque fiet de omnibus nominibus impanellatorum quouſque duodecim eorum jurentur ita indifferentes, quod verſus eos neutra parcium habeat aliquam materiam calumpnie. Horum autem duodecim ad minus quatuor erunt de hundredo, ubi villa in qua factum, de quo contenditur, fieri ſupponitur, ſita eſt; et quilibet juratorum predictorum habebit terras vel redditus pro termino vite ſue, ad minus ad valenciam annuum duodecim ſcutorum. Et hic ordo obſervatur in omnibus accionibus et cauſis criminalibus realibus et perſonalibus, preterquam ubi damna vel debitum in perſonalibus non excedunt quadraginta marcas monete Anglie, quia tunc non requiritur, quod juratores, in accionibus hujuſmodi tantum expendere poſſint. Habebunt tamen terram vel redditum ad valorem competentem juxta diſcrecionem

juſticiariorum; alioquin ipſi minime jurabuntur, ne per inediam et paupertatem juratorum hujuſmodi, de facili valeant corrumpi aut ſubornari. Et ſi per tales excepciones, tot juratorum nomina in panello cancellentur, quod non remaneat numerus ſufficiens ad faciendum inde Juratam, tunc mandabitur vicecomiti per breve regis, quod ipſe apponat plures juratores. Quod et ſepius fieri poteſt, ita quod inquiſicio veritatis ſuper exitu placiti non remanebit ob defectum juratorum. Et hec eſt forma qualiter juratores et veritatis hujuſmodi inquiſitores eligi debent in curia regis, ſimiliter et jurari. Quare, quomodo ipſi de veritate illa dicenda onerari debent et informari, jam reſtat ut queramus.

Cap. XXVI.

Qualiter Juratores evidenciis et teſtibus informari debent.

JURATIS demum in forma predicta duodecim probis et legalibus hominibus habentibus ultra mobilia ſua poſſeſſiones, ut predicitur, ſufficientes unde eorum ſtatum ipſi continere poterunt, et nulli partium ſuſpectis nec inviſis, ſed eiſdem vicinis, legetur in Anglico coram eis per curiam totum recordum et proceſſus placiti quod pendet inter partes, ac dilucide exponetur eis exitus placiti de cujus veritate jurati illi curiam certificabunt. Quibus peractis, utraque parcium per ſe vel conſiliarios ſuos, in preſencia curie, referet et manifeſtabit eiſdem juratis omnes et ſingulas materias et evidencias quibus eos docere ſe poſſe credit veritatem exitus taliter placitati. Et tunc adducere poteſt utraque pars coram eiſdem juſticiariis et juratis omnes et ſingulos teſtes, quos pro parte ſua ipſa producere velit, qui ſuper ſancta Dei Evangelia, per juſticiarios onerati, teſtificabuntur omnia que cognoſcunt probantia veritatem facti de quo partes contendunt. Et ſi neceſſitas exegerit, dividantur teſtes hujuſmodi donec ipſi depoſuerint quicquid velint, ita quod dictum unius non docebit aut concitabit eorum alium ad conſimiliter teſtificandum. Quibus conſummatis, poſtquam juratores illi deinde ad eorum libitum, ſuper veritate exitus hujuſmodi, deliberacione quantam ipſi optabunt colloquium habuerint in cuſtodia miniſtrorum curie, in loco eis ad hoc aſſignato, ne interim eos aliqui ſubornare valeant, revenient illi in curiam, et certificabunt juſticiarios ſuper veritate exitus ſic juncti in preſencia parcium (ſi intereſſe velint) et maxime petentis. Quorum juratorum dictum per leges Anglie Veredictum nuncupatur, et tunc ſecundum hujuſmodi veredicti qualitatem, juſticiarii reddent et formabunt judicium ſuum. Tamen, ſi pars altera, contra quam veredictum hujuſmodi prolatum eſt, conqueratur ſe per illud injuſte eſſe gravatam, proſequi tunc poteſt pars illa verſus juratores illos, et verſus partem que obtinuit, Breve de Attincta; virtute cujus, ſi compertum fuerit per ſacramentum viginti quatuor hominum,

in forma prenotata, retornatorum, electorum, et juratorum, qui multo majora habebunt patrimonia quam juratores primi, quod iidem primi juratores falsum fecerunt sacramentum, corpora eorundem primorum juratorum prisone domini regis committentur, bona eorum confiscabuntur, ac omnes possessiones eorundem in manus regis capientur; domus quoque eorum et edificia prosternentur, bosci succidentur, et prata arabuntur; ipsi eciam juratores primi ex tunc infames erunt, nec alicubi recipientur in testimonium veritatis; et pars que succubuit in priori placito restituetur ad omnia que ipsa perdidit occasione ejus. Quis tunc, etsi immemor salutis anime sue fuerit, non formidine tante pene, et verecundia tante infame, veritatem non diceret sic juratus? Et si unus forsan tantus sui honoris prodigus esse non pepercerit, aliqui tamen juratorum tantorum famam suam non negligent, neque bona et possessiones suas taliter distrahi pacientur propria culpa sua. Nonne jam hic ordo revelandi veritatem, pocior et efficacior est, quam est processus, qualem pariunt Civiles leges? Non hic pereunt cause aut jus alicujus, per mortem aut ob defectum testium; non hic producuntur testes ignoti, conducticii, pauperes, vagi, inconstantes, aut quorum conditiones vel malicie ignorantur. Vicini sunt testes isti, de propriis vivere potentes, fame integre, et opinionis illese, non per partem in curiam ducti, sed per officiarium nobilem et indifferentem electi, et coram judice venire compulsi. Isti omnia sciunt, que testes deponere norunt, et isti testium productorum agnoscunt constancias, inconstanciasque et famam. Quid ultra! vere nichil est quod veritatem dubii, de quo contendi poterit, detegere valebit, quod juratoribus talibus latere quomodo libet potest aut ignorari, dummodo possibile sit illud venire posse in agnicionem humanam.

Cap. XXVII.

Hic ostendit qualiter criminalia terminantur in Anglia.

SED quomodo in criminalibus leges Anglie scrutantur veritatem etiam rimari perneccessarium est, ut et in eis plenarie agnita ambarum legum forma, que earum efficacius latentem revelat veritatem cercius agnoscamus. Si reus quispiam de felonia aut prodicione in Anglia rettatus, crimen suum coram judicibus dedicat, mox vicecomes comitatus, ubi facinus illud commissum est, venire faciet coram eisdem judicibus viginti quatuor probos et legales homines de vicineto ville, ubi illud factum est, qui ret ato illo nulla affinitate attingunt, et quorum quilibet centum solidatus habeat terre et reditus ad certificandum judices illos super criminis illius veritate. Quibus comparentibus, rettatus ille eos calumpniare potest eadem forma qua inactionibus realibus fieri debere superius describitur. Et insuper reus ipse in favorem vite sue calumpniare potest triginta quinque homines quos ipse maxime formidat, qui ad ejus calumpniam cancellabuntur in panello, aut signis

talibus notabuntur, quod (ut verbis legis utar) illi ſuper eum non tranſibunt, licet ipſe nullam cauſam aſſignare ſciat excepcionis ſeu calumpnie ſue. Quis tunc mori poſſet in Anglia inique pro crimine, cum tot juvamina habere ille poterit ob favorem vite ſue, et non niſi vicini ejus probi et fideles homines, verſus quos ipſe nullam habet materiam excepcionis, eum condemnare poterunt? Mallem revera viginti facinoroſos mortem pietate evadere, quam juſtum unum injuſte condempnari. Nec tamen reum quempiam ſub hac forma, reatus ſui penam evadere poſſe ſuſpicandum eſt, dum ejus vita et mores timori deinceps erunt eis, qui eum ſic purgarunt a crimine. In hoc equidem proceſſu nichil eſt crudele, nichil inhumanum, nec ledi poterit innocens in corpore aut membris ſuis. Quare nec formidabit ille calumpniam inimicorum ejus, quia non torquebitur iſte ad arbitrium ipſorum. Sub hac igitur lege vivere quietum et ſecurum eſt. Judica ergo, Princeps optime, quæ legum harum ibi electiſſima foret ſi tu privatam ſpirares vitam.

Cap. XXVIII.

Princeps concedit leges Anglie eligibiliores eſſe ſubditis quam leges Civiles in caſu jam diſputato.

QUI Princeps: Arduum ambiguumve, Cancellarie, non conſpicio, quod moroſum me titubantemve redderet in eleccione rei quam interrogas. Nam quis non ſub lege qua ſecuram ducere poſſet vitam vivere pocius eligeret, quam ſub lege tali, ſub qua inermem, indefenſumque ipſe ſe ſemper redderet ſevicie omnium inimicorum ejus? Vere tutus quiſquam eſſe non poterit in corpore aut in bonis, quem inimicus ejus in omni cauſa convincere poterit teſtibus duobus eciam ignotis, per ipſummet electis et productis. Et licet quis mortem, per dicta eorum, ſubire non cogatur in Francia, parum tamen relevatur ipſe qui mortem evaſit, contractione nervorum et membrorum ſuorum, atque corporis ejus languore perpetuo. Tali revera diſcrimini impellere poteſt inimici aſtucia omnem hominem qui ſub lege degit quam tu jamdudum explicaſti. Sed tale malum operari nequeunt teſtes, qui depoſiciones ſuas faciunt in preſencia duodecim fide dignorum virorum facto vicinorum de quo agitur, et circumſtanciis ejus, qui et noſcunt eorundem teſtium mores, maxime ſi vicini ipſi fuerint noſcunt etiam et ſi ipſi ſint credulitate digni. Omnes etiam duodecim tales latere omnino non poterit, quicquid actum eſt, per aut inter vicinos eorum. Noſco namque ego cercius, que jam aguntur hic in Barro, ubi ſum modo converſatus, quam que in Anglia fiunt. Nec effugere poſſe puto noticiam probi viri ea, que aguntur, licet quodammodo occulte, prope domicilium ejus. Sed tamen cur predicta lex Anglie, que tam frugi et optabilis eſt, non eſt toti mundo communis vehementer admiror.

Cap. XXIX.

Quarè inquiſiciones non fiunt per juratas duodecim hominum in aliis regnis ſicut in Angliâ.

CANCELLARIUS. Juvenis receſſiſti, Princeps, ab Anglia, quo tibi ignota eſt diſpoſicio et qualitas terre illius, quas ſi agnoveris, et ceterarum regionum emolumenta qualitateſque eiſdem comparaveris, non admiraberis ea quibus jam agitatur animus tuus. Anglia ſane tam fertilis eſt, quod quantitate ad quantitatem comparata, ipſa ceteras omnes quaſi regiones exſuperat ubertate fructuum; eciam ſuum ultro ipſa profert vix induſtria hominis concitata. Nam agri ejus, campi, ſaltus, et nemora, tanta fecunditate germina ebulliunt, ut inculta illa ſepe plus commodi afferant poſſeſſoribus ſuis, quam arata, licet fertiliſſima ipſa ſint ſegetum, et bladorum. Includuntur quoque in terra illa paſturarum arva, foſſatis et ſepibus deſuper arboribus plantatis, quibus muniuntur a procellis et eſtu ſolis eorum greges et armenta; ipſeque paſture ut plurimum irrigue ſunt, quo infra earum clauſtra recluſa animalia cuſtodia non egent per diem, neque per noctem. Nam ibi lupi non ſunt, urſi, nec leones; quare de nocte oves eorum incuſtodite in campis recumbunt, in caulis et ovilibus, quibus impinguantur terre eorum. Unde homines patrie illius vix operis ſudore gravantur, quare ſpiritu ipſi magis vivunt, ut fecerunt patres antiqui, qui paſcere malebant greges quam animi quietem agriculture ſolicitudine turbare. Ex quibus homines regionis iſtius apti magis redduntur et diſpoſiti ad diſcernendum in cauſis, que magni ſunt examinis, quam ſunt viri qui telluris operibus inhabitantes ex ruris familiaritate mentis contrahunt ruditatem. Regio etiam illa ita reſperſa, refertaque eſt poſſeſſoribus terrarum et agrorum, quod in ea villula tam parva reperiri non poterit, in qua non eſt miles, armiger, vel pater familias, qualis ibidem Frankelayn vulgariter nuncupatur, magnis ditatus poſſeſſionibus; necnon libere tenentes alii, et Valecti plurimi, ſuis patrimoniis ſufficientes ad faciendum juratam in forma prenotata. Sunt namque valecti diverſi in regione illa qui plus quam ſexcenta ſcuta per annum expendere poſſunt; quo jurate ſuperius deſcripte ſepiſſime in regione illa fiunt, preſertim in ingentibus cauſis, de militibus armigeris et aliis, quorum poſſeſſiones in univerſo excedunt duo millia ſcutorum per annum. Quare cogitari nequit tales ſubornari poſſe, vel perjurari velle, nedum ob timorem Dei, ſed et ob honorem ſuum conſervandum, et vituperium et dampnum quoque inde conſequutivum evitandum, eciam ne eorum heredes ipſorum ledantur infamia. Taliter, Fili Regis diſpoſita inhabitataque non ſunt aliqua alia mundi regna.

Nam licet in eis ſint viri magne potentie, magnarum opum et poſſeſſionum, non tamen eorum unus prope moratur ad alterum, ut in Anglia tanti morantur viri, nec tanta, ut ibi, hereditorum eſt copia et poſſidencium agros.

Vix enim in villata una regionum aliarum reperiri poterit vir unus patrimonio ſufficiens, ut in juratis ipſe ponatur. Nam raro ibidem, aliqui preter nobiles reperiuntur poſſeſſores agrorum aliorumve immobilium, extra civitates et muratas villas. Nobiles quoque ibidem paſturarum copiam non habent, et vineas colere aut aratro manus apponere ſtatui eorum non convenit, tamen in vineis et terris arabilibus conſiſtit ſubſtancia poſſeſſionum eorum, exceptis ſolum pratis quibuſdam adjacentibus magnis ripariis, et exceptis boſcis, quorum paſture communes ſunt tenentibus et vicinis ſuis. Quomodo tunc in regionibus talibus jurata fieri poterit ex duodecim probis hominibus de vicineto, ubi factum aliquod in judicio deducitur, cum vicini dici non poterunt, qui tanta diſtancia diſtinguuntur? Vero remotos multum a facto duodecim juratores ibidem eſſe oportebit, poſtquam reus in regionibus illis triginta quinque ſine aſſignata cauſa de propinquioribus calumpniaverit. Quare, aut de multum remotis a facto, de quo contenditur, qui veritatem facti non agnoſcunt, in regnis illis oportebit facere juratam, aut de pauperibus quibus non eſt verecundia infamie, nec timor jacture bonorum ſuorum, cum ipſa non ſint; ipſi eciam, ruſticitatis ruditate obcecati, veritatis claritatem nequeunt intueri.

Non igitur mireris, Princeps, ſi lex, qua in Anglia veritas inquiritur, alias non pervagetur naciones, ipſe namque, ut Anglia, facere nequeunt ſufficientes conſimileſque juratas.

Cap. XXX.

Princeps hic commendat leges Anglie in proceſſu ſuo per juratos.

TUNC Princeps. Comparaciones odioſas eſſe licet dixerimus, lex tamen Civilis, in comparacione per te facta, omni ſe purgavit a crimine. Quia, licet ei legem Anglie tu pretuleris, odium inde ipſa non meretur, dum neque eam neque conditores ejus increpaſti; ſed ſolum Patriam ubi illa regit cauſam eſſe demonſtraſti quod non tam obtabili proceſſu, ut lex Anglie, ipſa in dubiis elicit veritatem. Legem vero Anglie, in caſu jam per te diſputato, accommodaciorem eſſe regno illi quam eſt lex Civilis ambigere non ſinimur; quo eam pro Civili commutare non appetimus. Sed tamen hec legis Anglie preeminencia ab alterius crimine non evenit, ſolum enim eam Anglie fertilitas ſic cauſavit.

Cap. XXXI.

Princeps dubitat an proceſſus per juratam repugnet Legi Divine.

SED, licet non infime, Cancellarie, nos dilectet forma qua leges Anglie in contencionibus revelant veritatem, tamen, an modus ille ſacre repugnet Scripture, vel non, paululum agitamur. Ait namque Dominus Phariſeis, Joh. VIII. "In lege veſtra ſcriptum eſt, quia duorum hominum teſtimonium verum eſt;" et huic applaudens Dominus inquit, "Ego ſum qui teſtimonium perhibeo de me ipſo, et teſtimonium perhibet de me, qui miſit me, Pater." Phariſei quippe Judei erant, unde idem erat dicere in lege veſtra ſcriptum eſt, et in lege Moyſaica que a Domino per Moyſen Filiis Iſrael prolata fuit ſcriptum eſt. Quare huic legi contraire legi eſt divine refragari, quo ſequitur, quod lex Anglie, ſi ab hac lege diſcedat, a lege divina, cui reluctari non licet, ipſa diſcedit. Scribitur eciam, Matth. XVIII. Quod Dominus loquens de correccione fraterna inter alia ſic ait, "Si autem non te audierit frater tuus, adhibe tecum adhuc unum aut duos, ut in ore duorum vel trium ſtet omne verbum." Si in ore duorum vel trium, Dominus omne verbum ſtatuerit, fruſtra plurium hominum queritur in dubiis veredictum. Nemo enim poteſt melius aut aliud fundamentum ponere, quam poſuit Dominus.

Hec ſunt, Cancellarie, que de legis Anglie proceſſu in probacionibus, aliquantulum me conturbant. Quare, quid his reſpondendum eſt a te, doceri depoſco.

Cap. XXXII.

Hic oſtenditur proceſſum per juratam Legi Divine non repugnare.

CANCELLARIUS. Non his, quibus turbaris, Princeps, contrariantur leges Anglie, licet aliter quodammodo ipſe in dubiis eliciant veritatem. Quid duorum hominum teſtimonio obeſt lex illa Generalis Concilii, qua cavetur, ut non niſi duodecim teſtium depoſicione Cardinales de criminibus convincantur? Si verum eſt duorum teſtimonium, a fortiori teſtimonium duodecim verum judicari debet, dicente juris regula, "Plus ſemper in ſe continet quod eſt minus." Supererogacionis meritum promitteba ur ſtabulario, ſi plus quam duos quos recepit denarios ipſe in vulnerati curationem erogaſſet. Nonne plus quam duos aut tres teſtes producere oportebit quempiam, qui abſentem ſe fuiſſe probare nititur, tempore criminis ſibi impoſiti, quod per duos aut tres teſtes adverſarius ejus probavit, vel probare paratus eſt? Sic et qui teſtes de perjurio convincere fatagit, multo illis

plures producere neceſſe eſt, quo non ſemper duorum vel trium hominum teſtimonium verum eſſe judicabitur; ſed intelligenda eſt lex illa, quod minore teſtium numero quam duorum veritas in dubiis non debet exquiri, ut patet per Bernardum[1] Extra. De Teſtibus, cap. *Licet* in Gloſſa ordinaria, ubi ipſe aſſignat diverſos caſus, in quibus per leges, plures quam tres oportet producere teſtes, viz. in aliquibus eorum quinque, et in aliquibus ſeptem. Per duos eciam teſtes veritatem probari poſſe, cum non aliter ipſa pateret, utique leges Anglie affirmant. Nam ſi que ſuper altum mare extra corpus cujuſlibet comitatus regni illius fiant, que poſtmodum in placito coram Admirallo Anglie deducantur, per teſtes illa juxta legum Anglie ſancciones probari debent. Conſimiliter quoque coram Conſtabulario et Mariſcallo Anglie fieri ſolitum eſt de facto, quod in regno alio actum eſt, dummodo ad juriſdiccionem Curie Conſtabularii cognicio ejus pertineat. Eciam et in Curiis quarundam Libertatum in Anglia, ubi per Legem Mercatoriam proceditur, probant per teſtes contractus inter mercatores extra regnum factos. Quia in caſibus hiis non reperiuntur vicini, per quorum ſacramenta jurate ex duodecim hominibus fieri poſſunt, prout de contractibus et aliis caſibus infra regnum Anglie emergentibus, eſt fieri conſuetum. Similiter, ſi carta, in qua teſtes nominantur, deducatur in Curia Regis, proceſſus tunc fiet erga teſtes illos, ipſi quoque recognoſcent ſin ul cum duodecim juratoribus per eorum ſacramenta utrum charta illa ſit factum ejus, cujus ſupponitur, an non. Quare, legem, qua teſtibus veritas extorquetur, lex Anglie non condemnat, maxime cum neceſſitas id depoſcat: quia et ſic faciunt ipſe leges Anglie nedum in caſibus jam notatis, ſed eciam in quibuſdam caſibus aliis, quos non expedit hic notare. Sed per teſtes ſolum lex ipſa nunquam litem dirimit, que per juratam duodecim hominum decidi poterit, cum ſit modus iſte ad veritatem eliciendam multo pocior et efficacior, quam eſt forma aliquarum aliarum legum orbis, et remocior a corrupcionis et ſubornacionis periculo. Nec poteſt hec procedendi forma in cauſa aliqua ob defectum teſtium deperire, neque teſtium, ſi qui fuerint, atteſtationes effectum debitum non ſortiri, nec perjurari poſſunt duodecim homines hujuſmodi, quin pro eorum crimine ipſi acerbiſſime puniantur, et nichilominus pars, per eorum depoſicionem gravata, remedium debitum conſequetur. Ac, non fient hec per extraneorum aut ignotorum hominum arbitrium aut dictamen, ſed per proborum nobilium, et fide dignorum, vicinorum partibus, ſacramentum, quibus partes ille nullam habent cauſam calumpnie aut diffidencie de eorum dicto. O quam horrendum et deteſtabile diſcrimen ſepe accidit ex forma per depoſicionem teſtium procedendi! Nonne, ſi quis clandeſtinum contrahat matrimonium, et poſtea coram teſtibus mulierem aliam ipſe affidaverit, cum eadem conſummare matrimonium artabitur in foro contentioſo, et poſtea in penitentiali foro judicabitur ipſe concumbere cum prima, ſi debite requiratur, et penitere debet quotiens accione ſua propria concubuerit cum ſecunda, licet in utroque foro judex fuerit homo unus et idem. Nonne

[1] Bernardus Parmenſis, A.D. 1250. See Decretales Gregorii Papæ IX. Lib. ii. Tit. xx. De Teſtibus et Attestationibus. Cap. xxiii. p. 717, Ed. 1584, Venetiis.

in hoc casu, ut in Job scribitur, "Perplexi sunt testiculi Leviathan?" Proh pudor! vere perplexi sunt; nam cum neutra mulierum harum, neque cum alia contrahens ille extunc concumbet, sine animadversione in foro contendencium et penitencium. Quale malum, inconveniens, aut discrimen per modum et formam processus legis Anglie impossible est in casu aliquo evenire, eciam si Leviathan ipse ea generare nitatur. Nonne vides jam, Princeps clarissime, leges Anglie tanto magis claresscere, quanto eisdem tu amplius reluctaris?

Cap. XXXIII.

Quarè reges Anglie quidam non delectati sunt in legibus suis.

PRINCEPS. Video, inquit, et eas inter tocius orbis jura, in casu quo tu jam fudasti, prefulgere considero, tamen progenitorum meorum Anglie regum quosdam audivimus, in legibus suis minime delectatos, fatagentes proinde leges Civiles ad Anglie regimen inducere, et patrias leges repudiare fuisse conatos. Horum revera consilium vehementer admiror.

Cap. XXXIV.

Cancellarius hoc ejendat causam rei quam Princeps petit.

CANCELLARIUS. Non admirareris, Princeps, si causam hujus conaminis mente sollicita pertractares. Audisti namque superius quomodo inter leges Civiles precipua sententia est, maxima, sive regula, illa que sic canit "Quod Principi placuit, legis habet vigorem;" qualiter non sancciunt leges Anglie, dum nedum regaliter, sed et politice Rex ejusdem dominatur in populum suum, quo ipse in coronacione sua ad legis sue observanciam astringitur sacramento; quod reges quidam Anglie egre ferentes, putantes proinde se non libere dominari in subditos, ut faciunt reges regaliter tantum principantes, qui lege Civili, et potissime predicta legis illius maxima regulant plebem suam, quo ipsi ad eorum libitum jura mutant, nova condunt, penas infligunt, et onera imponunt subditis suis, propriis quoque arbitriis, contendencium cum velint dirimunt lites; quare, moliti sunt ipsi progenitores tui hoc jugum politicum objicere, ut consimiliter et ipsi in subjectum populum regaliter tantum dominari, sed pocius debacchari queant; non attendentes, quod equalis est utriusque regis potencia, ut in predicto tractatu de Natura Legis Nature docetur, et quod non jugum, sed libertas est, politice regere populum, securitas quoque maxima nedum plebi, sed et ipsi regi, allevacio etiam non minima solicitudinis sue. Que ut tibi apercius pateant, utriusque regiminis experienciam percunctare, et regimine tantum regali, qualiter rex Francie principatur in subditos suos, exordium sume, deinde, a regalis et politici regiminis effectu, qualiter rex Anglie dominatur in sibi subjectos populos experienciam quere.

Cap. XXXV.

Mala que evenerunt ex regimine tantùm regali.

REMINISCERE, Princeps dive, qualiter villas et oppida regni Francie frugum opulentiſſima dum ibidem peregrinabaris conſpexiſti, regis terre illius hominibus ad arma, et eorum equis ita onuſta, ut vix in eorum aliquibus quam magnis oppidis tu hoſpitari valebas: ubi ab incolis didiciſti homines illos, licet in villa una per menſem aut duos perhendinaverint, nichil prorſus pro ſuis aut equorum ſuorum expenſis ſolviſſe, aut ſolvere velle; ſed, quod pejus eſt, artabant incolas villarum et oppidorum, in que deſcenderant, ſibi de victualibus, carnibus, et aliis quibus indigebant, eciam carioribus neceſſariis quam ibi reperiebantur, a circumvicinis villatis, ſuis propriis ſumptibus providere. Et ſi qui ſic facere renuebant, concito fuſtibus ceſi propere hoc agere compellebantur; ac demum conſumptis in villa una victualibus, focalibus, et equorum prebendis, ad villam aliam homines illi properabant, eam eciam conſimiliter devaſtando, nec denarium unum pro aliquibus neceſſariis ſuis, eciam aut concubinarum ſuarum, quas in magna copia ſecum ſemper vehebant, vel pro ſotularibus, caligis, et aliis hujuſmodi, uſque ad minimam earum ligulam ſolverunt, ſed ſingulas ſuas qualeſcunque expenſas habitatores villarum ubi moras fecerunt, ſolvere coegerunt. Sicque et factum eſt in omnibus villis et oppidis non muratis tocius regionis illius, ut non ſit ibi villula una expers de calamitate iſta, que non ſemel aut bis in anno hac nephanda preſſura depiletur. Preterea non patitur rex quenquam regni ſui ſale edere, quod non emat ab ipſo rege, precio, ejus ſolum arbitrio, aſſeſſo. Et ſi inſulſum pauper quivis mavult edere quam ſal exceſſivo precio comparare, mox compellitur ille tantum de ſale regis ad ejus precium emere, quantum congruet tot perſonis quot ipſe in domo ſua fovet. Inſuper omnes regni illius incole dant, omni anno, regi ſuo quartam partem omnium vinorum que ſibi accreſcunt; et omnis caupo quartum denarium precii vinorum que ipſe vendit; et ultra hec, omnes ville et burgi ſolvunt regi annuatim ingentes ſummas ſuper eos aſſeſſas pro ſtipendiis hominum ad arma; ſic quod armata regis, que quam magna ſemper eſt, paſcatur annuatim de ſtipendiis ſuis, per pauperes villarum, burgorum, et civitatum regni. Et ultra hec, quelibet villa ſemper ſuſtinet ſagittarios duos ad minus, et alique plures in omni apparatu, et habilimentis ſufficientibus ad ſerviendum regi in guerris ſuis, quociens ſibi libet eos ſummonere, quod et crebro facit; ac hiis non ponderatis, maxima tallagia alia ſunt omni anno aſſeſſa ad opus regis, ſuper quamlibet villam ejuſdem regni, de quibus non uno anno ipſi alleviantur. Hiis et nonnullis aliis calamitatibus plebs illa laceſſita in miſeria non minima vivit, aquam cotidie bibit, nec alium niſi in ſolemnibus feſtis plebeii guſtant liquorem. Froccis ſive collobitis de canabo ad modum panni ſaccorum teguntur. Panno de lana, preterquam de viliſſima, et hoc ſolum in tunicis ſuis ſubtus froccas illas, non utuntur, neque caligis niſi

ad genua diſcooperto reſiduo tibiarum. Mulieres eorum nudipedes ſunt exceptis diebus feſtis, carnes non comedunt mares aut femine ibidem preter lardum baconis, quo impinguant pulmentaria ſua in minima quantitate. Carnes aſſatas coctaſve alias ipſi non guſtant, preterquam interdum de inteſtinis et capitibus animalium pro nobilibus et mercatoribus occiſorum. Sed gentes ad arma comedunt alitilia ſua, ita ut vix ova eorum ipſis relinquantur pro ſummis veſcenda deliciis. Et ſi quid in opibus eis aliquando accreverit, quo locuples eorum aliquis reputetur, concito ipſe ad regis ſubſidium plus vicinis ſuis ceteris oneratur, quo extunc convicinis ceteris ipſe equabitur paupertate. Hec, ni fallor, forma eſt ſtatûs gentis plebane regionis illius. Nobiles tamen non ſic exaccionibus opprimuntur; ſed ſi eorum aliquis calumpniatus fuerit de crimine, licet per inimicos ſuos, non ſemper coram judice ordinario ipſe convocari ſolet; ſed quam ſepe in Regis Camera, et alibi in privato loco, quandoque vero ſolum per internuncios, ipſe inde alloqui viſus eſt, et mox ut criminoſum eum Principis conſcientia, relatu aliorum judicaverit, in ſacco poſitus, abſque figura judicii, per prepoſiti mariſcallorum miniſtros noctanter in flumine projectus ſubmergitur; qualiter et mori audiviſti majorem multo numerum hominum, quam qui legitimo proceſſu juris convicti extiterunt. Sed tamen, quod Principi placuit (juxta Leges Civiles) legis habet vigorem. Eciam et alia enormia hiis ſimilia, ac quedam hiis deteriora, dum in Francia, et prope regnum illud converſatus es, audiſti, non alio quam legis illius colore deteſtabiliter, dampnabiliterque perpetrata, que hic inferere noſtrum nimium dialogum protelaret. Quare, quid effectus legis politice et regalis, quam quidam progenitorum tuorum pro lege hac Civili commutare niſi ſunt, operatus eſt in regno Anglie a modo viſitemus, ut utraque legum experiencia doctus, que earum tibi eligibilior ſit ex earum effectibus elicere valeas, cum (ut ſupra memoratur) dicat Philoſophus, quod, "Oppoſita, juxta ſe poſita, magis apparent."

Cap. XXXVI.

Bona que eveniunt ex regimine politico et regali in Regno Anglie.

IN Regno Anglie, nullus perhendinat in alterius domo invito domino, ſi non in hoſpiciis publicis, ubi tunc pro omnibus que ibidem expendit ipſe plenarie ſolvet ante ejus abinde receſſum. Nec impune quiſque bona alterius capit ſine voluntate proprietarii eorundem; neque in regno illo prepeditur aliquis ſibi de ſale, aut quibuſcunque mercimoniis aliis ad proprium arbitrium, et de quocunque venditore, providere. Rex tamen neceſſaria domûs ſue, per rationabile precium juxta conſtabulariorum villarum diſcreciones aſſidendum, invitis poſſeſſoribus, per officiarios ſuos capere poteſt: ſed nichilominus precium illud in manibus, vel ad diem per majores officiarios domûs ſue limitandum, ſolvere per leges ſuas obnoxius eſt: quia nullius ſubditorum ſuorum bona juxta leges illas ipſe deripere poteſt

ſine ſatisfactione debita pro eiſdem. Neque rex ibidem, per ſe, aut miniſtros ſuos, tallagia, ſubſidia aut quevis onera alia, imponit legiis ſuis, aut leges eorum mutat, vel novas condit, ſine conceſſione, vel aſſenſu tocius regni ſui in Parliamento ſuo expreſſo. Quare incola omnis regni illius, fructubus quos ſibi parit terra ſua, et quos gignit pecus ejus, emolumentis quoque omnibus que induſtria propria vel aliena, ipſe terra marique lucratur, ad libitum propriu utitur, nullius prepeditus injuria vel rapina, quin ad minus inde debitas conſequitur emendas; unde inhabitantes terram illam locupletes ſunt, habundantes auro et argento, et cunctis neceſſariis vite. Aquam ipſi non bibunt, niſi qui ob devotionis et penitentie zelum aliquando ab aliis potubus ſe abſtinent, omni genere carnium et piſcium ipſi in copia veſcuntur, quibus patria illa non modice eſt referta, pannis de lanis bonis ipſi induuntur in omnibus operimentis ſuis, eciam abundant in lectiſterniis, et quolibet ſuppellectili cui lana congruit in omnibus domibus ſuis; necnon opulenti ipſi ſunt in omnibus hutilimentis domûs, neceſſariis culture, et omnibus que ad quietam et felicem vitam exiguntur, ſecundum ſtatus ſuos. Nec in placitum ipſi ducuntur, niſi coram judicibus ordinariis, ubi illi per leges terre juſte tractentur. Nec allocuti ſive implacitati ſunt de mobilibus aut poſſeſſionibus ſuis, vel arrettati de crimine aliquo qualitercunque magno et enormi, niſi ſecundum leges terre illius, et coram judicibus antedictis. Et hii ſunt fructus, quos parit regimen politicum et regale, ex quibus ibi jam apparent experiencie effectûs legis, quam quidam progenitorum tuorum objicere conati ſunt.

Superius tibi quoque apparent effectus legis alterius, quam tanto zelo loco legis illius ipſi niſi ſunt inducere, ut ex fructibus earum tu agnoſcas eas. Et nonne ambicio, luxus, et libido, quos predicti progenitores tui regni bono preferebant, eos ad hoc commercium concitabant? Conſidera igitur, Princeps optime, etiam alia que ſequentur.

Cap. XXXVII.

Combinacio meritorum utriuſque regiminis.

SANCTUS THOMAS in Libro, quem Regi Cipri de Regimine Principum ſcripſit dicit quod, "rex datur propter regnum, et non regnum propter regem." Quo, omnis poteſtas regia referri debet ab bonum regni ſui, quod effective conſiſtit in defencione ejuſdem ab exterorum incurſibus, et in tuicione regnicolarum, et bonorum ſuorum ab indigenarum injuriis et rapinis. Quare rex, qui hec peragere nequit, impotens eſt neceſſario judicandus. Sed ſi ipſe paſſionibus propriis, aut penuria ita oppreſſus eſt, quod manus ſuas cohibere nequit a depilacione ſubditorum ſuorum, quo ipſemet eos depauperat, nec vivere ſinit et ſuſtentari propriis ſubſtanciis ſuis, quanto tunc impotencior ille judicandus eſt, quam ſi eos defendere ipſe non ſufficeret erga aliorum injurias? Revera, rex talis nedum impotens, ſed et ipſa impotencia, dicendus eſt, et non liber judicari poteſt, tantis impotentie

nexubus vinculatus. E regione, rex liber et potens eſt, qui incolas ſuos erga exteros et indigenas, eorum quoque bona et facultates, nedum erga vicinorum et concivium rapinas defendere ſufficit, ſed erga propriam oppreſſionem et rapinam, licet ſibi paſſiones, neceſſitateſque hujuſmodi reluctentur. Quis enim potencior, liberiorve eſſe poteſt, quam qui non ſolum alios, ſed et ſeipſum ſufficit debellare? Quod poteſt, et ſemper facit rex politice regens populum ſuum. Quare experientie effectu tibi conſtat, Princeps, progenitores tuos, qui ſic politicum regimen abjicere fatagerunt, non ſolum in hoc non potuiſſe nanciſci potenciam quam optabant, videlicet ampliorem quam habebant, ſed et ſui bonum, ſimiliter et bonum regni ſui, per hoc ipſi diſcrimini expoſuiſſent, et periculo grandiori. Tamen hec, que jam de experiencie effectu practicata potenciam regis regaliter tantum preſidentis exprobare videntur, non ex legis ſue defectu proceſſerunt, ſed ex incuria, negligenciaque taliter principantis. Quare, ipſa dignitatem illam potencia non minuunt a dignitate regis politice regulantis, quos paris eſſe potencie, in predicto Tractatu de Natura Legis Nature, luculenter oſtendi. Sed potenciam regis regaliter tantum principantis difficilioris eſſe exercici, ac minoris ſecuritatis ſibi et populo ſuo, illa clariſſime jam demonſtrant, quo optabile non foret regi prudenti regimen politicum pro tantum regali commutare. Quare et Sanctus Thomas ſupradictus optare cencetur ut omnia mundi regna politice regerentur.

Cap. XXXVIII.

Interpellatio Principis.

TUNC Princeps. Parce, obſecro, Cancellarie, quod te ad tantam a propoſito tuo digreſſionem compuli queſtionibus meis; michi namque perutilia ſunt que hac occaſione exarati, licet te parumper retardaverint a meta intencionis tue, ad quam ut tu jam celerius properes flagito, et primo, ut aliquos alios caſus in quibus legum Anglie et Civilium diſcrepant ſententie, ut promiſiſti et cepiſti, mihi enarres.

Cap. XXXIX.

Secundus caſus in quo leges Civiles et leges Anglie diſcrepant in judiciis ſuis.

CANCELLARIUS. Quoſdam caſus alios, in quibus diſſenciunt leges pre licte, ut petis, Princeps, detegere conabor. Sed tamen, que legum earum preſtancior ſit in judiciis ſuis, non meo, ſed arbitratui tuo relinquam.

Prolem ante matrimonium natam, ita ut poſt, legittimat lex Civilis et ſuccedere facit in hereditate parentum; ſed prolem quam matrimonium non parit ſuccedere non finit lex

Anglorum, naturalem tantum eam esse, et non legittimam proclamans. Civilisti in casu hoc legem eorum extollunt, quia incitamentum eam esse dicunt quo matrimonii sacramento cesset peccatum per quod alias duorum anime interirent. Presumendum quoque esse dicunt tales fuisse contrahencium animos in primo eorum concubitu, quales esse demonstrat subsequens sacramentum. Ecclesia eciam fetus hujusmodi habet pro legitimis. Hec, ni fallor, tria fulcimenta sunt majora quibus ipsi approbant defenduntque legem suam. Ad que sic respondent legis Anglie periti. Primo dicunt, quod peccatum primi concubitûs in casu proposito non purgatur per subsequens matrimonium, licet ejus merito delinquencium quodam modo minuatur pena. Dicunt eciam, quod peccati illius conscii tanto minus inde penitent, quo leges transgressoribus illis favere considerant; quali etiam consideracione procliviores ipsi redduntur ad committendum peccatum, per quod nedum Dei, sed et Ecclesie precepta negligunt; unde lex illa nedum delinquencium participat culpam, sed et legis bone nature ipsa declinat; cum lex sit sanctio sancta, jubens honesta, et prohibens contraria; qualia ipsa non prohibet, sed pocius ad inhonesta animos labencium invitat. Nec vallari potest lex ista per hoc, quod Ecclesia fetus hujusmodi pro legittimis habet. Pia namque mater illa in quamplurimis dispensat, que fieri ipsa non concedit; dispensativa enim laxavit Apostolus virginitatis frena, quod consulere noluit, cum omnes ipse voluerit ut se, virgines permansisse. Et absit ut mater tanta a filiis suis in casu isto pietatem suam cohiberet, dum sepe, ipsi etiam hujus legis Civilis fomento concitati, incidunt in peccatum. Et per matrimonium subsequens docetur Ecclesia, contrahentes penitere de preterito, et de futuro per matrimonium se velle cohibere. Sed longe alium in hoc casu lex Anglie effectum operatur, dum ipsa non concitat ad peccatum, neque peccantes fovet, sed terret eos, et ne peccent minatur penas. Carnis etenim illecebre fomento non egent, egent vero frenis, cui irritamenta carnis lasciva et quasi infatigabilia sunt. Et homo, quum in individuo perpetuari nequit, perpetuari naturaliter appetit in specie sua, quia omne quod vivit assimilari cupit cause prime, que perpetua est et eterna. Unde fit, quod plus delectatur homo in sensu tactûs, quo servatur species ejus, quam in sensu gustûs, quo conservatur individuum. Quare Noe ulciscens in filium qui ejus pudenda revelavit, nepoti suo filio delinquentis maledixit, ut inde plus cruciaretur reus, quam proprio possit incommodo. Quare lex que vindicat in progeniem delinquentis penalius prohibet peccatum, quam que solum delinquentem flagellat. Ex quibus considerare licet, quanto zelo lex Anglie illicitos prosequitur concubitus, dum ex eis editam prolem ipsa nedum judicat non esse legittimam, sed et succedere prohibet in patrimonio parentum. Num quid tunc, lex ista casta non est? et non forcius firmiusque repellit peccatum, quam facit lex predicta Civilis, que cito, et quasi inultum crimen luxurie remittit?

Cap. XL.

Cauſe ſpeciales quare Nothi non legittimantur per matrimonium ſubſequens in regno Anglie.

PRETEREA, Leges Civiles dicunt, filium naturalem tuum eſſe filium populi. De quo Metricus quidam ſic ait,

> Cui pater eſt populus, pater eſt ſibi nullus et omnis:
> Cui pater eſt populus, non habet ille patrem.

Et ſi patrem non habuit tempore nativitatis ſue, quomodo ex poſt facto ipſe patrem nanciſci poterit, natura non novit. Quo, ſi ex fornicatoribus duobus mulier una filios peperit duos, quam poſtea unus ex concubinariis illis ducat in uxorem, quis ex filiis hiis duobus per matrimonium illud legittimatur? Opinio ſuadere poteſt, ſed racio reperire nequit, dum ambo filii illi populi fetus judicati ſemel parentes ignorabant. Inconſonum propterea videretur, quod in matrimonio illo extunc ab eadem muliere natus, cujus generacio ignorari non poterit, expers eſſet hereditatis, et filius neſcius genitoris ſui ſuccederet patri et matri ejus, maxime infra regnum Anglie, ubi filius ſenior ſolus ſuccedit in hereditate paterna. Et non minus incongruum eſſe ſentiret arbiter equus, ſi filius ex ſtupro equaliter participaret cum filio ex legittimo thoro hereditatem, que Jure Civili inter maſculos dividenda eſt. Nam Sanctus Auguſtinus, XVI. Libro de Civitate Dei, ſic ſcribit, "Abraham omnem cenſum ſuum dedit Iſaac filio ſuo, filiis autem concubinarum dedit daciones." Ex quo videtur innui, quod ſpuriis non debetur hereditas, ſed victûs neceſſitas. Hec ille. Sub nomine vero ſpurii denotat Auguſtinus, omnem fetum illegittimum, qualiter et ſepius facit Scriptura ſacra, que neminem vocat baſtardum. Ecce differenciam non minimam ſentit Auguſtinus, ſentit et Abraham inter ſucceſſionem ſpurii et filii ex legittimo concubitu. Ceterum, omnes filios illegittimos reprehendit Scriptura ſacra ſub metaphora hac, dicens, "Spuria vitulamina non dabunt radices altas, nec ſtabile fundamentum collocabunt," (Sapientie IV. Reprehendit et Eccleſia, quæ eos a ſacris repellit ordinibus, et ſi cum tali diſpenſaverit, non eum tamen permittit dignitate preeſſe in Eccleſia Dei. Congruit idcirco legi hominum, in ſucceſſionis beneficio minuere, quos Eccleſia indignos judicat ſacro ordine, et quos ipſa repellit ab omni prelacia: ipſos eciam, quos Scriptura ſacra in natalibus minoratos judicat a legitime procreatis. Gedeon autem, virorum fortiſſimus, ſeptuaginta filios in matrimonio legitur procreaſſe, et non niſi unum ſolum habuiſſe ex concubina; filius tamen ipſe concubine omnes filios illos legittimos nequiter peremit, excepto uno ſolo (Judicum IX). Quo, in notho uno plus malitie fuiſſe deprehenditur quam in filiis legitimis ſexaginta novem. Tritum etenim proverbium eſt, "Si bonus eſt baſtardus, hoc ei venit a caſu, videlicet gratia ſpeciali, ſi autem malus ipſe fuerit, hoc ſibi accidit a natura." Corrupcionem namque et maculam quandam

cenſetur illegittimus partus contrahere a peccato genitorum ſuorum ſine culpa ejus, ut maximam nos contraximus omnes a crimine primorum parentum, licet non tantam. Aliam tamen nothi quam legittimi contrahunt maculam ex genitura ſua; eorum namque generacionem mutua utriuſque parentis libido culpabilis operatur, qualiter in legittimis caſtiſque amplexibus conjugatorum ipſa non ſolet debacchari. Mutuum ſane et commune eſt peccatum taliter fornicantium; quo, primo ſimilatum peccato magis ſevit in fetum, quam peccatum aliter, ſolitarieque peccancium; ut exinde natus potius peccati filius dici mereatur, quam filius peccatorum. Quare Sapientie Liber generaciones has duas diſtinguens de generacione legittima ſic affatur, "O quam pulchra eſt caſta generacio cum claritate! Immortalis eſt enim memoria illius, quoniam apud Deum nota eſt et apud homines." Altera vero non eſt nota apud homines, quo filii ex ea nati, filii populi nominantur. De generatione utique illa altera liber ille dicit, "Ex iniquis omnes filii qui naſcuntur teſtes ſunt nequicie adverſus parentes ſuos, in interrogacione ſua." (Sapientie eodem IV. cap.) Interrogati etenim de parentibus ſuis, eorum ipſi revelant peccatum, ut filius Noe nequam revelavit pudenda patris ſui. Creditur idcirco, cecum illum natum, de quo Phariſei, (Joh. IX.) dixerunt "Tu in peccatis natus es totus," fuiſſe baſtardum, qui naſcitur totaliter ex peccato; et dum ſubditur, "Et tu doces nos?" videtur eos intellexiſſe, baſtardum non ut legittimum in naturalibus eſſe diſpoſitum ad ſcienciam et doctrinam. Non igitur bene dividit lex illa, que baſtardos a nativitate, et legittimos parificat in hereditate paterna, cum eos diſpares judicet Eccleſia in hereditate Dei, ſimiliter et diſtinguat ſacra Scriptura in forma prenotata, dividatque natura in donis ſuis, ſignans naturales tantum nevo quaſi naturali quodam, licet latente in animis ſuis. Quam igitur legum illarum, Anglicarum, viz. et Civilium, in caſu hoc, tu Princeps, amplecteris et judicas preferendam?

Cap. XLI.

Princeps approbat legem que non legittimat natos ante matrimonium.

PRINCEPS. Revera eam, que forcius a regno peccatum eliminat, et firmius in eo virtutem conſervat. Arbitror eciam illos in legis humane beneficiis minorandos, quos lex divina indigniores conſiderat, et quos poſtponit Eccleſia in beneficiis ſuis, natura quoque procliviores judicat ad peccandum.

Cap. XLII.

Tercius casus in quo discrepant leges predicte.

CANCELLARIUS. Recte estimo te sentire, quare et casus alios memorabor, in quibus discrepant he leges due. Leges Civiles sanctiunt, quod "Partus semper sequitur ventrem." Ut, si mulier servilis condicionis nubat viro condicionis libere, proles eorum servus erit: et e converso, servus maritatus libere, non nisi liberos gignit. Sed lex Anglie nunquam matris, sed semper patris condicionem imitari partum judicat; ut ex libera, etiam ex nativa, non nisi liberum liber generet, et non nisi servum in matrimonio procreare potest servus. Que, putas, legum harum melior est in sentenciis suis? Crudelis est lex, que liberi prolem sine culpa subdit servituti. Nec minus crudelis censetur, que libere sobolem sine merito redigit in servitutem. Legiste vero dicunt, Leges Civiles prevalere in his judiciis suis. Nam dicunt, quod "non potest arbor mala fructus bonos facere, neque arbor bona fructus malos facere;" ac omnis legis sentencia est, quod plantacio quelibet cedit solo quo inseritur; cercior quoque multo est partus que eum fuderunt viscera, quam quis eum pater procreavit. Ad hec legis Anglie consulti dicunt, quod "partus ex legittimo thoro non cercius noscit matrem quam genitorem suum;" nam ambe leges, que jam contendunt, uniformiter dicunt, quod "ipse est pater, quem nupcie demonstrant." Numquid tunc magis est conveniens, ut filii condicio ad patris pocius quam ad matris condicionem referatur, cum de conjugatis dixerat Adam, "Erunt ipsi duo in carne una;" quod Dominus exponens in Evangelio ait, "Jam non sunt duo, sed una caro." Et cum masculinum concipiat femininum ad masculinum quod dignius est referri debet tota caro sic facta una. Quare Adam et Evam vocavit Dominus, non Evam, sed quia caro una ipsi erant, ambos eos vocavit ipse nomine viri, videlicet, Adam, ut patet Genesis quinto capit. Ipse quoque Leges Civiles dicunt, quod mulieres semper coruscant radiis maritorum suorum. Unde[1] (C. De Incolis. Libro X. Ti. fi.) textus sic loquitur "Mulieres honore maritorum erigimus, et genere nobilitamus, et forum ex eorum persona statuimus, et domicilium mutamus; sin autem minoris ordinis virum postea sortite, priore dignitate private, posterioris mariti consequantur condicionem et domicilium." Et cum nomen patris, et non matris, gerat proles omnis, et maxime masculina, unde tunc provenire poterit quod filius racione matris amitteret honorem, condicionemve patris sui mutaret, cujus tamen nomen ipse retinebit, presertim dum honore patris ejusdem ac condicione resplendeat mater ejus, et dum viri honor vel condicio numquam per uxoris vicium denigratur. Crudelis nempe censeretur lex, que sine causa, filium liberi servituti committit,

[1] The reference in the MS. and in all the printed editions is given thus—C. (*i. e.* Codex). *Qui professione se excusant*, Lib. x. li. fi.: the author having quoted a wrong codex, and having written li. fi. instead of ti. fi. for tituli fine.

et terram pro qua liber ille innocens a crimine ſudavit innocentis filii ſui titulo non ſudanti tradet extraneo poſſidendam, ac patris nomen eciam filii ſervitutis nota commaculat. Crudelis etiam neceſſario judicabitur lex, que ſervitutem augmentat, et minuit libertatem; nam pro ea Natura ſemper implorat humana. Quia, ab homine, et pro vicio, introducta eſt ſervitus; ſed libertas a Deo hominis eſt indita nature. Quare ipſa ab homine ſublata ſemper redire deſiderat, ut facit omne quod libertate naturali privatur. Quo impius et crudelis judicandus eſt, qui libertati non favet. Hec conſiderancia Anglie jura in omni caſu libertati dant favorem. Et licet jura illa judicent eum ſervum quem ſervus in conjugio ex libera procreavit, non per hoc jura illa rigida crudeliave ſentiri poterunt. Nam mulier que conjugio ſervo ſe ſubjecit, facta ei caro una, quo ipſa, ut dicunt leges ſupraſcripte, ejus conſequitur condicionem, et proprio arbitrio ſe fecit ancillam, ſed pocius ſervam, nullatenus a lege coacta, qualiter et faciunt qui ſe ſervos reddunt in curiis regum, vel in ſervitutem ſe vendunt, nullatenus ad hoc compulſi. Quo modo tunc liberum ſanccire poſſunt leges filium illum quem mater talis taliter eſt enixa? Nunquam enim ſic ſubjectus eſt vir uxori, licet maxima domina ipſe fuerit, ut ſubjecta eſt libera hec ſervo, quem ipſa facit dominum ejus, dicente Domino uxori omni, "Eris ſub poteſtate viri, et ipſe dominabitur tibi." Et quid eſt, quod dicunt legiſte illi de fructu arboris bone vel male? nonne conditionis libere vel ſervilis eſt uxor omnis, qualis eſt maritus ejus? Et in cujus ſolo plantavit maritus, dum uxor ejus eſt ſibi caro una? nonne in proprio? Quid ſi ſurculum dulcis nature inſeverit ipſe ſtipiti arboris acerbe, dummodo arbor illa ejus eſt, nonne fructus, licet ex ſtipite parumper redolent, ſemper ſint fructus ejus, et natura dulcis ut erat ſurculus quem dominus arboris inſerunt? Sic ex muliere genita proles mariti eſt progenies, fuerit mater libera vel ancilla. Sancciunt tamen leges Angliæ, quod dominus native a libero in matrimonium ſumpte ipſo inconſulto, cum eam repudiare nequeat, (dicente Evangelio, "Quos Deus conjunxit homo non ſeparet,") recuperabit verſus liberum illum omne damnum quod ipſe ſuſtinuit racione deperditi ſervitii, et amiſſe ancille. Hec jam, ut eſtimo, eſt ſumma et forma legis Anglie, in caſu jam enarrato. Quid igitur jam tibi videtur, Princeps, in caſu iſto? Et que legum predictarum preſtantior aut eligibilior a te judicatur?

Cap. XLIII.

Princeps approbat legem quæ partus non ſequitur ventrem.

PRINCEPS. Anglorum legem in hoc caſu Romanorum legi preſtare, dubitare nos racio non permittit. Et optacior michi ſemper eſt lex, que favorem pocius quam rigorem partibus adminiſtrat. Recolo namque illius juris regulam que ſic dicit, "Odia perſtringi, et favores convenit ampliari." Cancellarius, Et bene quidem. Alium adhuc caſum tibi referam, Princeps, in quo concertant leges iſte, et non multum poſtea tunc deſiſtam, ne oneroſum tibi ſit tantis ſollicitari ſchiſmatibus, eciam ne in faſtidium tibi veniat diſceptatio mea diucius protelata.

Cap. XLIV.

Quartus caſus in quo leges predicte variant.

LEGES Civiles impuberum tutelas proximis de eorum ſanguine committunt, agnati fuerint ſeu cognati, unicuique videlicet ſecundum gradum et ordinem, quo in hereditate pupilli ſucceſſurus eſt. Et racio legis hujus eſt, quia nullus tenerius favorabiliuſve infantem alere fataget quam proximus de ſanguine ejus. Tamen longe aliter de impuberum cuſtodia ſtatuunt leges Anglie. Nam ibidem, "Si hereditas, que tenetur in ſocagio, deſcendat impuberi ab aliquo agnatorum ſuorum, non erit impubes ille ſub cuſtodia alicujus agnatorum ejus, ſed per ipſos cognatos, videlicet conſanguineos ex parte matris ipſe regetur." Et ſi ex parte cognatorum hereditas ſibi deſcenderit, pupillus ille cum hereditate ſua per proximum agnatum, et non cognatum ejus cuſtodietur, quouſque ipſe fuerit adultus. Nam leges ille dicunt, quod "committere tutelam infantis illi qui eſt ei proxime ſucceſſurus, eſt quaſi agnum committere lupo ad devorandum." Sed ſi hereditas illa, non in ſocagio, ſed teneatur per ſervicium militare, tunc per leges terre illius, infans ipſe et hereditas ejus non per agnatos neque per cognatos, ſed per dominum feodi illius cuſtodientur, quouſque ipſe fuerit etatis viginti et unius annorum. Quis, putas, infantem talem, in actibus bellicis, quos facere racione tenure ſue ipſe aſtringitur domino feodi ſui, melius inſtruere poterit aut velit quam dominus ille cui ab eo ſervicium tale debetur, et qui majoris potencie et honoris eſtimatur, quam ſunt alii amici propinqui infantis? Ipſe namque, ut ſibi ab eodem tenente melius ſerviatur, diligentem curam adhibebit, et melius in hiis eum erudire expertus eſſe cenſetur, quam reliqui amici juvenis, rudes forſan, et armorum inexperti, maxime ſi non magnum fuerit patrimonium ejus. Et quod utilius eſt infanti, qui vitam et omnia ſua periculis bellicis exponet in ſervicio domini ſui racione tenure ſue, quam in milicie actubuſque bellicis imbui, dum minor eſt, cum actus hujuſmodi ipſe in etate matura declinare non poterit? Et revera non minime erit regno accommodum, ut incole ejus in armis ſint experti. Nam, ut dicit Philoſophus, "Audacter quilibet facit, quod ſe ſcire ipſe non diffidit." Nunquid tunc legem hanc, tu approbas, Fili Regis, et collaudas ſuper legem alteram jam deſcriptam?

Cap. XLV.

Hic commendat Princeps educacionem orphanorum filiorum nobilium.

PRINCEPS. Immo, Cancellarie, legem hanc pluſquam alteram ego laudo. Nam in ejus parte prima, quam tu notaſti, caute magis, quam Civilis, ipſa providet ſecuritati pupilli. Sed tamen in ejus parte ſecunda, magis ego delector. Nam ab ea eſt, quod in Anglia nobilium progenies de facili degenerari non poteſt, ſed probitate

pocius, ſtrenuitate, et morum honeſtate anteceſſores ſuos ipſa tranſcendet, dum in alciori nobiliorique curia quam in domo parentum illa ſit imbuta, licet in domo conſimili forſan parentes ejus educati erant; quia conſimilis adhunc non erat domus parentum illorum domui dominorum, quibus ipſi parentes et ipſi infantes ſervierunt. Principes quoque regni ſub hac lege regulati, ſimiliter et domini alii a rege immediate tenentes non poſſunt de levi in laſciviam, ruditatemve labi, cum in puericia dum orphani fuerint ipſi in domo regia nutriuntur. Quare non infime domus regie opulenciam, magnitudinemque collaudo, dum in ea gimnaſium ſupremum ſit nobilitatis regni; ſcola quoque ſtrenuitatis probitatis, et morum quibus regnum honoratur, et floret, ac contra irruentes ſecuratur; etiam formido ipſa erit inimicis et amicis regni. Hoc revera bonum accidiſſe non potuiſſet regno illi, ſi nobilium filii, orphani, et pupilli, per pauperes amicos parentum ſuorum nutrirentur. Nec regni bono officere poteſt, licet burgenſium filii et aliorum libere tenentium, qui in ſocagio tenent tenementa ſua, quo ipſi ad miliciam non aſtringuntur, in domo conſimilium amicorum ſuorum educantur, ut perſpicue conſideranti lucide apparere poteſt.

Cap. XLVI.

Adhuc recitat caſus alios in quibus variant leges antedicte.

TUNC Cancellarius. Sunt et alii caſus nonnulli, in quibus differunt leges predicte. Ut quia leges Civiles judicant furtum manifeſtum, per reddicionem quadrupli, et furtum non manifeſtum, per dupli recompenſacionem, expiari. Sed leges Anglie neutrum facinorum illorum micius, quam committentis morte puniri permittunt, dum modo ablati valor duodecim denariorum valorem excedat. Item libertinum ingratum leges Civiles in priſtinam redigunt ſervitutem: ſed leges Anglie ſemel manumiſſum ſemper liberum judicant, gratum et ingratum. Alii quoque ſunt caſus hujuſcemodi non pauci, quos jam ſtudio brevitatis pretereo. Et neque in hiis duobus caſibus prædictarum legum preſtancias ego jam deſcribo, cum non magne ſint indaginis eorum qualitates. Nec diffido ingenii tui ſolerciam eas ſufficienter poſſe rimari.

Cap. XLVII.

Princeps parvi pendit caſus jam recitatos.

PRINCEPS. Nec expedit, Cancellarie, in hiis multum ſuadere. Quia licet in Anglia, fures clandeſtini et manifeſti paſſim morte plectantur, non ceſſant ipſi ibidem omnino predari, ac ſi penam tantam illi minime formidarent. Quanto tunc minus ſe abſtinerent a crimine, ſi penam præviderent miciorem? Et abſit, a ſervitute

ſemel evaſum ſemper deinde ſub minis tremere ſervitutis, maxime ingratitudinis colore, cum ingratitudinum ſpecies vix poterint pre multitudine numerari, et humana natura in libertatis cauſa favorem ſemper, magis quam in cauſis aliis, deprecetur.

Sed jam, Cancellarie, obnixe te imploro, ut a modo amiſſa plurium cauſuum hujuſmodi examinatione, michi edicas quare leges Anglie, tam bone, frugi, et optabiles, in Univerſitatibus non docentur, ut Civiles ſimiliter et Canonum leges; et quare in eiſdem non datur Baccalaureatus et Doctoratus gradus, ut in aliis Facultatibus et Scienciis eſt dari conſuetum.

Cap. XLVIII.

Oſtendit hic Cancellarius quare leges Anglie non docentur in Univerſitatibus.

CANCELLARIUS. In Univerſitatibus Anglie non docentur ſciencie niſi in Latina lingua; et leges terre illius in triplici lingua addiſcuntur, viz. Anglica, Gallica, et Latina. Anglica, quia inter Anglos lex illa maxime inolevit; Gallica, quia poſtquam Galli, Duce Wilhelmo Anglie Conqueſtore, terram illam optinuerunt, non permiſerunt ipſi eorum advocatos placitare cauſas ſuas, niſi in lingua quam ipſi noverunt; qualiter et faciunt omnes Advocati in Francia, etiam in Curia Parliamenti ibidem. Conſimiliter Gallici poſt eorum adventum in Angliam, ratiocinia de eorum proventibus non receperunt niſi in proprio idiomate, ne ipſi inde deciperentur. Venari etiam, et jocos alios exercere, ut talorum et pilarum ludos, non niſi in propria lingua delectabantur; quo, et Anglici, ex frequenti eorum in talibus comitiva, habitum talem contraxerunt, quod hucuſque ipſi in ludis hujuſmodi, et compotis, linguam locuuntur Gallicanam, et placitare in eadem lingua ſoliti fuerunt, quouſque mos ille vigore cujuſdam ſtatuti quam plurimum reſtrictus eſt; tamen in toto, hucuſque aboleri non potuit; tum, propter terminos quoſdam, quos plus proprie placitantes, in Gallico quam in Anglico, exprimunt; tum quia Declaraciones, ſuper Brevia Originalia, tam convenienter ad naturam brevium illorum pronunciari nequeunt, ut in Gallica, ſub quali ſermone Declaracionum hujuſmodi formule addiſcuntur. Reportantur etiam, ea que in Curiis Regiis placitantur, diſputantur, et judicantur, ac in libros ad futurorum erudicionem rediguntur, in ſermone ſemper Gallico. Quam plurima etiam ſtatuta regni illius in Gallico conſcribuntur. Unde accidit, quod lingua jam in Francia vulgaris non concordat aut conſimilis eſt Gallico inter legis peritos Anglie uſitato, ſed vulgarie qualam ruditate corrupta. Quod fieri non accidit in ſermone Gallico infra Angliam uſitato, cum ſit ſermo ille ibidem ſepius ſcriptus quam locutus. Sub tertia vero linguarum predictarum, viz. ſub Latina, omnia Brevia Originalia et Judicialia, ſimiliter et omnia Recorda Placitorum in Curiis Regum, etiam et quedam Statuta, ſcribuntur. Quare, dum leges Anglie in his

tribus addiſcuntur linguis, ipſe in Univerſitatibus, ubi ſolum Latina exercetur lingua, convenienter erudiri non poterunt, aut ſtuderi. Leges tamen ille, in quodam ſtudio publico, pro illarum apprehenſione omni Univerſitate convenientiore et proniore, docentur et addiſcuntur. Studium namque iſtud ſitum eſt prope Curiam Regis, ubi leges ille indies placitantur, diſputantur, et juditia per eaſdem redduntur per judices, viros graves, ſenes, in legibus illis peritos et graduatos; quo in curiis illis, ad quas omni die placitabili confluunt ſtudentes in legibus illis quaſi in ſcolis publicis, leges ille leguntur et docentur. Situatur eciam ſtudium illud inter locum Curiarum illarum et Civitatem London, que de omnibus neceſſariis opulentiſſima eſt omnium civitatum et oppidorum regni illius. Nec in civitate illa, ubi confluencium turba ſtudencium quietem perturbare poſſit, ſitum eſt ſtudium iſtud; ſed ſeorſim parumper, in civitatis illius ſuburbio, et propius curiis predictis, ut ad eas ſine fatigacionis incommodo ſtudentes indies ad libitum accedere valeant.

Cap. XLIX.

Hic oſtendit diſpoſicionem generalem ſtudii legum Anglie.

SED ut tibi conſtet, Princeps, hujus ſtudii forma et imago, illam ut valeo, jam deſcribam. Sunt namque in eo decem Hoſpicia minora, et quandoque vero plura, que nominantur Hoſpicia Cancellarie. Ad quorum quodlibet pertinent centum ſtudentes ad minus, et ad aliqua eorum major in multo numerus, licet non omnes ſemper in eis ſimul conveniant. Studentes etenim iſti, pro majori eorum parte, juvenes ſunt, originalia, et quaſi legis elementa addiſcentes, qui in illis proficientes ut ipſi matureſcunt, ad majora Hoſpicia ſtudii illius, quæ Hoſpicia Curie appellantur, aſſumuntur. Quorum majorum quatuor ſunt in numero, et ad minimum eorum pertinent in forma prenotata ducenti ſtudentes aut prope. In his enim majoribus hoſpiciis, nequaquam poteſt ſtudens aliquis ſuſtentari minoribus expenſis in anno, quam octoginta ſcutorum; et ſi ſervientem ſibi ipſe ibidem habuerit, ut eorum habet pluralitas, tanto tunc majores ipſe ſuſtinebit expenſas. Occaſione vero ſumptuum hujuſmodi, cum ipſi tanti ſint non niſi nobilium filii in hoſpitiis illis leges addiſcunt; cum pauperes et vulgares, pro filiorum ſuorum exhibicione, tantos ſumptus nequeant ſufferre, et mercatores raro cupiant tantis oneribus annuis attenuare mercandiſas ſuas. Quo fit, ut vix doctus in legibus illis reperiatur in regno qui non ſit nobilis, aut de nobilium genere egreſſus; unde magis aliis conſimilis ſtatûs hominibus, ipſi nobilitatem curant, et conſervacionem honoris et fame ſue. In his revera hoſpiciis majoribus, eciam et minoribus, ultra ſtudium legum, eſt quaſi gimnaſium omnium morum qui nobiles decent. Ibi cantare ipſi addiſcunt, ſimiliter et ſe exercent in omni genere harmonie. Ibi eciam

tripudiare, ac jocos ſingulos nobilibus convenientes, qualiter in domo regia exercere ſolent enutriti. In ferialibus diebus eorum pars major legalis diſcipline ſtudio, et in feſtivalibus ſacre Scripture et Cronicorum leccioni poſt Divina obſequia ſe confert. Ibi quippe diſciplina virtutum eſt, et viciorum omnium relegacio. Ita ut propter virtutis acquiſicionem, vicii etiam fugam, milites, barones, alii quoque magnates et nobiles regni, in hoſpiciis illis ponunt filios ſuos, quamvis non gliſcunt eos legum imbui diſciplina, nec ejus exercicio vivere, ſed ſolum ex patrimoniis ſuis. Ibi vix unquam ſedicio, jurgium, aut murmur reſonat, et tamen delinquentes non alia pena quam ſolum a communione ſocietatis ſue amocione plectuntur; quia penam hanc ipſi plus formidant, quam criminoſi alibi carcerem timent, aut vincula; nam ſemel ab una ſocietatum illarum expulſus nunquam ab aliqua ceterarum ſocietatum earundem recipitur in ſocium; quo ibi pax eſt continua, et quaſi amicitia conjunctorum et eorum omnium converſacio. Formam vero, qua leges ille in his diſcuntur hoſpiciis, hic exprimere non expedit; cum tibi, Princeps, eam experiri non liceat. Scito tamen, quod delectabilis ipſa eſt, et omni modo expediens legis illius diſcipline, omni quoque affeccione digna. Unum tamen te ſcire deſidero, quod neque Aurelianis, ubi tam Canones addiſcuntur, quam Civiles leges, et quo a quampluribus regionibus confluunt ſcolares, neque Andaginis, aut in Cadomo, aliave Univerſitate Francie, preterquam ſolum Pariſiis, reperiuntur tot ſtudentes infanciam evaſi, ſicut in hoc ſtudio; licet ibi addiſcentes omnes ſolum ab Anglia ſint oriundi.

Cap. L.

De ſtatu et gradu ſervientis ad Legem, et quomodo ipſe creatur.

SED cum tu, Princeps, ſcire deſideres, cur in legibus Anglie non datur Baccalaureatus et Doctoratus Gradus, ſicut in utroque jure in univerſitatibus eſt dare conſuetum; ſcire te volo, quod licet gradus hujuſmodi in legibus Anglie minime conferantur, datur tamen in illis, nedum gradus, ſed et ſtatus quidam gradu Doctoratus non minus celebris aut ſolempnis, qui Gradus Servientis ad Legem appellatur. Et confertur ſub hac, que ſubſequitur, forma. Capitalis Juſticiarius de Communi Banco, de conſilio et aſſenſu omnium juſticiariorum eligere ſolet, quociens ſibi videtur opportunum, ſeptem vel octo de maturioribus perſonis qui in predicto generali ſtudio magis in legibus profecerunt, et qui eiſdem juſticiariis optime diſpoſicionis eſſe videntur, et nomina eorum ille deliberare ſolet Cancellario Anglie in ſcriptis, qui illico mandabit per brevia regis cuilibet electorum illorum, quod ſit coram Rege ad diem per ipſum aſſignatum, ad ſuſcipiendum Statum et Gradum Servientis ad Legem ſub ingenti pena, in quolibet brevium predictorum limitata. Ad quem diem quilibet eorum comparens jurabitur ſuper ſancta Dei Evangelia fore paratum ad diem et locum tunc ſibi ſtatuendos, ad recipiendum ſtatum et gradum predictos, et quod ipſe in

die illo dabit aurum, ſecundum conſuetudinem regni in hoc caſu uſitatem. Tamen, qualiter ad diem illam, quilibet electorum illorum ſe habebit, nec non formam et modum, qualiter ſtatus et gradus hujuſmodi conferentur et recipientur, hic inferere omitto, cum ſcripturam majorem illa exigant quam congruit operi tam ſuccincto. Tibi tamen, ore tenus, ea alias explicavi. Scire tamen te cupio, quod adveniente die ſic ſtatuto electi illi, inter alias ſolempnitates, feſtum celebrant, et convivium ad inſtar coronationis regis, quod et continuabitur per dies ſeptem; nec quiſquam electorum illorum ſumptus, ſibi contingentes circa ſolempnitatem creacionis ſue, minoribus expenſis perficiet quam mille et ſexcentorum ſcutorum; quo, expenſe, quas octo ſic electi tunc refundent, excedunt ſummam duodecim millium et octingentorum ſcutorum; quarum expenſarum pars quedam, inter cetera, hec erit: Quilibet eorum dabit anulos de Auro, ad valenciam in toto quadraginta librarum ad minus monete Anglicane. Et bene recolit Cancellarius ipſe, quod cum ille ſtatum et gradum hujuſmodi receperat, ipſe ſolvit pro anulis, quos tunc diſtribuit quinquaginta libras, que ſunt trecenta ſcuta. Solet namque unuſquiſque Servientium hujuſmodi tempore creacionis ſue dare cuilibet Principi, Duci, et Archiepiſcopo, in ſolempnitate illa preſenti, ac Cancellario, et Theſaurario Anglie, anulum ad valorem octo ſcutorum. Et cuilibet Comiti et Epiſcopo conſimiliter preſentibus, nec non Cuſtodi privati ſigilli, utrique Capitali Juſticiario, et Capitali Baroni de Saccario Regis anulum ad valorem ſex ſcutorum. Et omni Domino Baroni Parliamenti, et omni Abbati et notabili Prelato, ac magno Militi tunc preſenti, Cuſtodi etiam rotulorum Cancellarie Regis, et cuilibet Juſticiariorum, anulum ad valentiam quatuor ſcutorum. Similiter et omni Baroni de Saccario Regis, Camerariis, eciam omnibus Officiariis et notabilibus viris in Curiis Regis miniſtrantibus, anulos minoris precii, convenientes tamen ſtatibus eorum quibus donantur. Ita quod, non erit clericus, maxime in Curia Communis Banci, licet infimus, quin anulum ipſe recipiet convenientem gradui ſuo. Et ultra hos ipſi dant anulos aliis amicis ſuis. Similiter et liberatam magnam panni unius ſecte, quam ipſi tunc diſtribuunt in magna habundancia, nedum familiaribus ſuis, ſed et amicis aliis et notis qui eis attendent et miniſtrabunt tempore ſolempnitatis predicte. Quare, licet in Univerſitatibus in gradum Doctoratus erecti expenſas non modicas faciant tempore creacionis ſue, ac birreta, alia quoque donaria quam bona erogent, non tamen aurum ipſi conferunt, aut alia donaria ſumptuoſve faciunt his expenſi ſimilia. Neque in regno aliquo orbis terrarum datur gradus ſpecialis in legibus regni illius, preterquam ſolum in regno Anglie. Nec eſt advocatus in univerſo mundo, qui racione officii ſui tantum lucratur, ut ſerviens hujuſmodi. Nullus eciam, licet in legibus regni illius ſcientiſſimus fuerit, aſſumetur ad officium et dignitatem Juſticiarii in Curiis Placitorum coram ipſo Rege, et Communis Banci, que ſunt ſupreme curie ejuſdem regni ordinarie, niſi ipſe primitus ſtatu et gradu ſervientis ad legem fuerit inſignitus. Nec quiſquam, et preterquam ſerviens talis, in curia Communis Banci ubi omnia realia placita placitantur, placitabit. Quare ad ſtatum et gradum talem, nullus hucuſque aſſumptus eſt, qui non in predicto generali legis ſtudio ſexdecem annos ad minus antea complevit. Et in

ſignum quod omnes juſticiarii illi taliter extant graduati, quilibet eorum ſemper utitur, dum in curia Regis ſedet, birreto albo de ſerico, quod primum et precipuum eſt de inſignibus habitûs, quo ſervientes ad legem, in eorum creacione, decorantur. Nec birretum illud juſticiarius, ſicut nec ſerviens ad legem unquam deponet, quo caput ſuum in toto diſcooperiet, eciam in preſentia regis, licet cum celſitudine ſua ipſe loquatur. Quare, Princeps preclariſſime, tu amodo heſitare non poteris quin leges iſte, que tam ſingulariter ſupra Civiles leges, leges etiam omnium aliorum regnorum honorantur, et tam ſolempni ſtatu eruditorum et miniſtrantium in eis venerantur, pretioſe ſint, nobiles, et ſublimes, ac magne preſtantie, maximeque ſcientie et virtutis.

Cap. LI.

De modo creacionis Juſticiarii, et de habitu et converſatione ejus.

SED ut juſticiariorum ſicut et ſervientium ad legem ſtatus tibi innoteſcat, eorum formam, officiumque ut potero jam deſcribam. Solent namque in Communi Banco quinque juſticiarii eſſe, vel ſex ad majus. Et in Banco Regis, quatuor vel quinque. Ac quociens eorum aliquis, per mortem vel aliter ceſſaverit, rex de adviſamento concilii ſui eligere ſolet unum de ſervientibus ad legem, et eum per litteras ſuas patentes conſtituere in juſticiarium loco judicis ſic ceſſantis. Et tunc Cancellarius Anglie adibit curiam, ubi juſticiarius ſic deeſt, deferens ſecum litteras illas, ac ſedens in medio juſticiariorum, introduci facit ſervientem ſic electum; cui in plena curia ipſe notificabit voluntatem regis de officio judiciario ſic vacante, et legi faciet in publico literas predictas; quo facto, Cuſtos rotulorum Cancellarie Regis leget coram eodem electo jusjurandum quod ipſe facturus eſt, quod et cum ſupra Sancta Dei Evangelia ipſe juraverit, Cancellarius ſibi tradet litteras regis predictas et Capitalis Juſticiarius curie illius aſſignabit ſibi locum in eadem, ubi deinceps ille ſedebit, et mox eum ſedere faciet in eodem. Sciendum tamen tibi eſt, Princeps, quod juſticiarius iſte inter cetera tunc jurabit, quod juſticiam miniſtrabit indifferenter omnibus hominibus coram eo placitantibus, inimicis et amicis, nec ſic facere differet, etiamſi rex per literas ſuas, aut ore tenus, contrarium jufſerit. Jurabit etiam, quod ex tunc non recipiet ipſe ab aliquo, preterquam a rege ſedum, aut pencionem aliquam, ſeu liberatam, neque donum capiet ab habente placitum coram eo, preterquam eſculenta et poculenta, que non magni erunt precii. Sciendum etiam tibi eſt, quod juſticiarius ſic creatus, convivium, ſolempnitatem ve, aut ſumptus aliquos non faciet tempore ſuſcepcionis officii et dignitatis ſue; cum non ſint illa gradus aliqui in facultate legis, ſed officium ſolum illa ſint et magiſtratus, ad regis nutum duratura. Habitum tamen indumenti ſui in quibuſdam ipſe extunc mutabit, ſed non in omnibus inſigniis ejus. Nam ſerviens ad legem ipſe exiſtens, roba longa, ad inſtar ſacerdotis,

cum capicio penulato circa humeros ejus extendente, et desuper collobio cum duobus labelulis, qualiter uti solent doctores legum in universitatibus quibusdam, cum supra descripto birreto vestiebatur. Sed justiciarius factus, loco collobii, clamide induetur, firmata super humerum ejus dexterum, ceteris ornamentis servientis adhuc permanentibus, excepto quod stragulate veste, aut coloris depertiti, ut potest serviens, justiciarius non utetur, et capicium ejus non alia furrura quam menevera penulatur, capicium tamen servientis pellibus agninis semper albis duplicatur. Qualem habitum te plus ornare optarem, cum potestas tibi fuerit, ad decorem status legis, et honorem regni tui. Scire te etiam cupio, quod justiciarii Anglie non sedent in curiis regis, nisi per tres horas in die, scilicet, ab hora octavam ante meridiem usque horam undecimam completam; quia post meridiem curie ille non tenentur. Sed placitantes tunc se divertunt ad pervisum, et alibi, consulentes cum servientibus ad legem, et aliis consiliariis suis. Quare justiciarii, postquam se refecerint, totum diei residuum pertranseunt studendo in legibus, sacram legendo Scripturam, et aliter ad eorum libitum contemplando, ut vita ipsorum plus contemplativa videatur quam activa. Sicque quietam illi vitam agunt ab omni sollicitudine et mundi turbinibus semotam. Nec unquam compertum est, eorum aliquem donis aut muneribus fuisse corruptum. Unde et hoc genus gratie vidimus subsecutum, quod vix eorum aliquis sine exitu decedat, quod justis magne et quasi appropriate benedicciouis Dei est. Michi quoque non minimi muneris Divini censetur esse pensandum, quod ex judicum sobole, plures de proceribus et magnatibus regni hucusque prodierunt quam de aliquo alio statu hominum regni qui se prudencia et industria propria opulentos, inclytos, nobilesque fecerunt. Quanquam mercatorum status, quorum aliqui sunt qui omnibus justiciariis regni prestant divitiis, judicum numerum in millibus hominum excedat. Nam fortune, que nihil est, istud ascribi non poterit, sed Divine solum benedictioni fore, arbitror, tribuendum. Cum Ipse per Prophetam dicit, quod "generatio rectorum benedicetur." Et alibi de justis loquens Propheta, ait, quod "filii eorum in benediccione erunt." Dilige igitur, Fili Regis, justiciam que sic ditat, colit, et perpetuat fetus colencium eam. Et zelator esto legis, que justiciam parit, ut a te dicatur quod a justis scribitur, "Et semen eorum in eternum manebit."

Cap. LII.

Princeps increpat dilaciones que sunt in Curiis Regis.

PRINCEPS. Unum jam solum supereſt, Cancellarie, declarandum, quo parumper adhuc fluctuat, inquietatur quoque mens mea; in quo si eam solveris, non amplius te questionibus fatigabo. Dilaciones ingentes, ut asseritur, paciuntur leges Anglie in processibus suis, plus quam leges aliarum nacionum; quod petentibus nedum juris sui prorogacio est, sed et sumptuum quidem importabile onus, et maxime in actionibus illis, in quibus dampna petentibus non redduntur.

Cap. LIII.

Dilaciones que ſunt in Curiis Regis ſunt neceſſarie et rationabiles.

CANCELLARIUS. In accionibus perſonalibus extra urbes et villas mercatorias, ubi proceditur ſecundum conſuetudines et libertates earundem, proceſſus ſunt ordinarii, et quantaſlibet dilaciones paciuntur, non tamen exceſſivas. In urbibus vero et villis illis, potiſſimum cum urgens cauſa depoſcat, celeris ut in aliis mundi partibus fit proceſſibus; nec tamen ut alibi ipſi nimium aliquando feſtinantur, quo ſubſequitur partis leſio. Rurſus in realibus accionibus, in omnibus fere mundi partibus, moroſi ſunt proceſſus, ſed in Anglia quodammodo celeriores. Sunt quippe in regno Francie, in curia ibidem ſupprema que curia Parliamenti vocitatur, proceſſus quidam qui in ea plus quam triginta annis pependerunt. Et novi ego appellacionis cauſam unam, que in curia illa inter Ricardum Heiron mercatorem Anglicum et mercatores alios pro tranſgreſcione facta infra juriſdiccionem Curie illius agitata fuit, jam per decem annos ſuſpenſam fuiſſe, et adhuc veriſimile non eſt eam infra annos decem alios poſſe decidi. Oſtendit et michi dudum, dum Pariſiis morabar, hoſpes meus proceſſum ſuum in ſcriptis, quem in curia Parliamenti ibidem ipſe tunc octo annos pro quatuor ſolidatis redditûs, qui de pecunia noſtra octo denarios non excedunt, proſecutus eſt, nec ſperavit ſe in octo annis aliis judicium inde obtenturum. Alios quoque nonnullos novi caſus ibidem, hiis ſimiles. Sicque leges Anglie non tantas, ut mihi viſum eſt, dilaciones forciuntur ut faciunt leges regionis illius. Sed revera, perneceſſarium eſt dilaciones fieri in proceſſibus omnium accionum, dummodo nimium ipſe non fuerint exceſſive. Nam ſub illis partes, et maxime pars rea, quamſepe ſibi provident de defenſionibus utilibus, ſimiliter et conſiliis, quibus alias ipſi carerent. Nec unquam in judiciis tantum imminet periculum quantum parit proceſſus feſtinatus. Vidi nempe quondam apud civitatem Sarum, coram judice quodam, ad gaolam ibidem deliberandam cum clerico ſuo aſſignato, mulierem de morte mariti ſui infra annum de interfeccione ejus attinctam, ſimiliter et combuſtam. In quo caſu licuit judici illi, uſque poſt annum illum, arrettamentum ſive diſracio-cinacionem mulieris illius reſpectuaſſe. Et poſt annum illum vidi unum de ſervientibus interfecti illius, coram eodem juſticiario, de morte ejuſdem magiſtri ſui convictum; qui tunc publice fatebatur ipſummet ſolum magiſtrum ſuum occidiſſe, et magiſtram ſuam uxorem ejus tunc combuſtam innocentem omnino fuiſſe de morte ejus; quare ipſe tractus et ſuſpenſus fuit. Sed tamen omnino, etiam in ipſo mortis articulo, mulierem combuſtam, immunem a crimine illo fuiſſe ipſe lugebat. O quale putandum eſt, ex hoc facto, conſcientie diſcrimen et remorſum eveniſſe juſticiario illi tam precipiti, qui potuit proceſſum illum juſte retardâſſe? Sepius, proh dolor! ipſe michi faſſus eſt quod nunquam in vita ſua animum ejus de hoc facto ipſe purgaret. Crebro enim in deliberacionibus judicia matureſcunt; ſed in accelerato pro-

ceſſu, nunquam. Quare, leges Anglie eſſonium admittunt qualia non faciunt leges alie mundi univerſi. Nonne quam utiles ſunt Vocaciones ad Warrantum? Auxilia de hiis, ad quos ſpectat revercio tenementorum qui in placitum deducunt, et qui habent evidencias eorundem. Auxilia eciam de coparticipibus, qui reddent pro rata ſi tenementum coparticipi allottatum evincatur. Et tamen hec dilaciones ſunt, ſicut tu Princeps alias noſti ex doctrina mea. Et dilaciones hiis ſimiles leges alie non admittunt, neque leges Anglie frivolas et infructuoſas permittunt inducias. Et ſi que in regno illo dilationes in placitis minus accommode fuerint uſitate, in omni parliamento amputari ille poſſunt, eciam et omnes leges alie in regno illo uſitate cum in aliquo claudicaverint, in omni parliamento poterunt reformari. Quo recte concludi poteſt, quod omnes leges regni illius optime ſunt, in actu vel potencia; quo faciliter in actum duci poterunt et in effenciam realem. Ad quod faciendum, quociens equitas id popoſcerit, ſinguli reges ibidem ſacramento aſtringuntur ſolempniter preſtito tempore receptionis diadematis ſui.

Cap. LIV.

Leges Anglie optime ſunt quas ſcire regibus expedit; tamen in confuſo eas ſcire regibus ſufficiet.

PRINCEPS. Leges illas, nedum bonas, ſed optimas eſſe, Cancellarie, ex protectione tua in hoc dialogo certiſſime deprehendi. Et ſi que ex eis meliorari depoſcant, id certiſſime fieri poſſe, parliamentorum ibidem formule nos erudiunt. Quo, realiter, potencialiterve, regnum illud ſemper preſtantiſſimis legibus gubernatur, nec tuas in hac concionacione doctrinas futuris Anglie regibus inutiles fore conjicio, dum non delectet regere legibus, que non delectant. Faſtidit namque artificem inepcio inſtrumenti, et militum ignavum reddit debilitas lancie et mucronis. Sed ſicut ad pugnam animatur miles, cum nedum ſibi prona ſint arma, ſed et magis cum in actibus bellicis ipſe ſit expertus, dicente Vegetio de re militari, quod "ſciencia rei bellice dimicandi audaciam nutrit." Quia nemo facere metuit quod ſe bene didiciſſe confidit. Sic et rex omnis ad juſticiam animatur, dum leges quibus ipſa fiet, nedum juſtiſſimas eſſe agnoſcit, ſed et earum ille expertus ſit formam et naturam, quas tantum in univerſali, incluſive, et in confuſo, principi ſcire ſufficiet, remanente ſuis judicibus earum diſcreta determinataque pericia et ſciencia altiori. Sic equidem et Scripturarum divinarum periciam, ut dicit Vincencius Beluacenſis in libro de Morali Inſtitucione Principum, omnis princeps habere deberet; cum dicat Scriptura ſuperius memorata, quod "vani ſunt omnes, in quibus non eſt ſciencia Dei;" et Proverbiorum XVI. ſcribatur, "Divinacio, id eſt divina ſententia vel ſermo divinus, ſit in labiis regis, et tunc in judicio non errabit os ejus." Non tamen profunde, determinateve intelligere tenetur princeps Scripturas ſacras, ut decet ſacre Theologie profeſſorem; ſufficit namque ei earum in confuſo deguſtare ſententias, qualiter et periciam legis ſue. Sic et fecerunt Carolus

Magnus, Ludovicus filius ejus, et Robertus quondam rex Francie, qui hanc ſcripſit ſequenciam "Sancti Spiritus adſit nobis gratia;" et quam plures alii, ut in XV. Capite libri predicti, Vincentius predictus luculenter docet. Unde et doctores legum dicunt, quod "Imperator gerit omnia jura ſua in ſcrinio pectoris ſui;" non, quia omnia jura ipſe noſcit realiter et in actu, ſed dum principia eorum ipſe percipit, formam ſimiliter et naturam, omnia jura ſua ipſe intelligere cenſetur, que eciam transformare ille poteſt, mutare, et caſſare. Quo, in eo potencialiter ſunt omnia jura ſua, ut in Adam erat Eva antequam plaſmaretur. Sed quia, Cancellarie, ad legum Anglie diſciplinatum michi jam conſpicio ſufficienter eſſe ſuaſum, quod et in hujus operis exordio facere promiſiſti, non te amplius hujus pretextu ſolicitare conabor; ſed obnixe depoſco ut in legis hujus principiis, ut quondam incepiſti, me erudias, docens quodam modo ejus agnoſcere formam et naturam; quia lex iſta michi ſemper peculiaris erit inter ceteras legis orbis, inter quas ipſam lucere conſpicio, ut Lucifer inter ſtellas. Et dum intencioni tue, que ad collacionem hanc concitatus es, jam ſatisfactum eſſe non ambigo, tempus poſtulat et racio ut noſtris colloquiis terminum conferamus, reddentes ex eis laudes Ei et gracias, qui ea incepit, proſecutus eſt, et finivit, Alpha et Omega quem dicimus, quem et laudet omnis Spiritus. AMEN.

FINIS.

DE LAUDIBUS LEGUM ANGLIÆ.

A TREATISE IN COMMENDATION OF THE

LAWS OF ENGLAND.

BY CHANCELLOR SIR JOHN FORTESCUE.

TRANSLATED FROM THE LATIN BY

FRANCIS GREGOR, ESQ.

OF TREWARTHENNICK.

DE LAUDIBUS LEGUM ANGLIÆ.

INTRODUCTION.

DURING that impious and unnatural Civil War between the Houſes of York and Lancaſter, which not long ſince raged in England, and by means whereof their Sovereign King Henry VI. with his conſort Queen Margaret, who was daughter of the King of Jeruſalem and Sicily, and their only ſon Edward Prince of Wales, were obliged to quit the kingdom; and at laſt, the king, being taken priſoner by his ſubjects, ſuffered a very long and terrible impriſonment; but the queen, with her ſon, being thus baniſhed, made her abode in the duchy of Bar, which at that time belonged to her father, the King of Jeruſalem; the prince, as he grew up to man's eſtate, applied himſelf wholly to martial exerciſes; and being often mounted on fiery and wild horſes, which he did not fear to urge on with the ſpur, made it his diverſion, ſometimes with his lance, ſometimes with his ſword, or other weapons, to attack and aſſault the young gentlemen his attendants, according to the rules of military diſcipline: which a certain brave old knight, his father's Chancellor, at that time in baniſhment with him, perceiving, thus accoſts the Prince.

CHAP. I.

The Chancellor exhorts the Prince to the ſtudy of the Laws.

I AM right glad, moſt ſerene Prince, at that worthy genius of yours, whilſt I obſerve with how great an inclination you employ yourſelf in ſuch manly and martial exerciſes; which become you, not ſo much as you are a ſoldier, as, that one time or other, you will be our king. For it is the duty of a king to fight the battles of his people, and to judge them in righteouſneſs (1 Samuel viii. 20). Wherefore, as you divert and employ yourſelf ſo much in feats of arms, ſo I could wiſh to ſee you zealouſly affected

towards the ſtudy of the laws; becauſe, as wars are decided by the ſword, ſo the determination of juſtice is effected by the laws: which the Emperor Juſtinian wiſely conſidering, in the very beginning of the Introduction to his Inſtitutes, ſays, "It is not only incumbent upon the Imperial majeſty to be graced with arms, but alſo to be fenced about with the laws; that he may know how to govern aright, both in times of peace and of war." As an inducement to ſet yourſelf in good earneſt about the ſtudy of the laws, the greateſt lawgiver of his time, Moſes, formerly chief of the congregation of the people of Iſrael, invites you more effectually than Juſtinian, when, by divine inſpiration, he commands the kings of Iſrael to read the laws all the days of their life, ſaying thus: "It ſhall be when he ſitteth upon the throne of his kingdom, that he ſhall write him a copy of this law in a book, out of that which is before the prieſts, the Levites; and it ſhall be with him, and he ſhall read therein all the days of his life, that he may learn to fear the Lord his God, to keep all the words of this law, and theſe ſtatutes, to do them" (Deut. xvii. 18, 19). Helynandus, upon the place, ſays, "A prince therefore ought not, neither is he permitted, under the pretence of his duty as a ſoldier, to be ignorant of the laws." A little after he is commanded to take a copy of the law from the prieſts and Levites, that is, from catholic and learned men. Thus he. Deuteronomy is the book of laws whereby the kings of Iſrael were obliged to govern the people committed to their charge: Moſes commands their kings to read this book, that they may learn to fear the Lord their God, and keep his ſtatutes which are written in the law. Behold, to fear God is the effect of the law, which a man cannot attain to, unleſs he firſt know the will of God as it is written in the law. For the principal, the chief point of obedience, is to know the will of that Maſter whom we are to ſerve and obey: and yet Moſes here in this edict of his, mentions the effect of the law firſt, viz., The fear of God, and then exhorts to the keeping the commands of God, which are the cauſe of that fear; for the effect is always prior to the cauſe in the intention of the perſon who exhorts. But what kind of fear is that which the laws propoſe to the keepers thereof? Sure, it cannot be that fear, of which it is written (1 John iv. 18) that perfect love caſteth out fear. Yet that fear, though it ſeems a ſervile fear, often ſtirs up kings to read the laws. But this is not the effect of the law; the fear which Moſes here intends, and which the laws produce, is that deſcribed by the prophet, "The fear of the Lord is clean, enduring for ever" (Pſalm xix. 9). This fear is filial and quite excludes that ſervile dread and horror, which that hath which is caſt out by love. This proceeds from the laws, which teach to do the will of God, in the doing whereof we ſhall eſcape all puniſhment. "The glory of the Lord," ſays the Scriptures, "is upon them that fear him, whom alſo he glorifieth:" in a word, this fear is the fear which Job ſpeaks of, when, after he had turned his thoughts many ways in ſearch after wiſdom, he gives us this as the reſult of his inquiry: "Behold the fear of the Lord, that is wiſdom, and to depart from evil is underſtanding" (Job xxviii. 28). To depart from evil, the laws teach and caution; whereby they alſo produce that fear of God, which is the true wiſdom.

Chap. II.

The Prince's Anſwer.

WHEN the Prince heard this, looking very intently at the old knight, he replied, I know, good Chancellor, that the book of Deuteronomy is a part of the Holy Scriptures, that the laws and ceremonies contained therein are of divine inſtitution and promulgated by Moſes; upon which account the reading of them is matter for a pious and devout contemplation; but the law, to the ſtudy and underſtanding whereof you now invite me, is merely human, derived from human authority, and reſpects this world: wherefore, though Moſes obliged the kings of Iſrael to the reading of the Deuteronomical law, it does not thence reaſonably follow, that by the ſame rule he invites all other kings to do the like as to the laws of their reſpective dominions: the reaſon of the ſtudy of the one, and of the other, is not ſtrictly the ſame.

Chap. III.

The Chancellor enforceth his Exhortation.

CHANCELLOR. I obſerve, moſt excellent Prince, from your reply, with what care and attention you weigh the nature of my advice, which encourages me very much, not only to explain more clearly, but to enter ſomewhat deeper into the matters I have begun and propoſed to you; be pleaſed to know then, that not only the Deuteronomical, but alſo all human laws are ſacred; the definition of a law being thus, "It is an holy ſanction, commanding whatever is honeſt, and forbidding the contrary." And that muſt needs be holy, which is ſo in its definition. The law or right is alſo defined "to be that, which is the art of what is good and equal;" or, the law conſidered as a ſcience or profeſſion, may aptly be defined in the ſame manner. Whence we, who are the miniſterial officers, who ſit and preſide in the Courts of Juſtice, are therefore not improperly called, *Sacerdotes* (Prieſts). The import of the Latin word (*ſacerdos*) being one who gives or teaches holy things; and all laws which are ſolemnly enacted by men have their authority from God: ſeeing the Apoſtle ſays (Rom. xiii. 1), that all power is from God. Laws which are made by men (who for this very end and purpoſe receive their power from God), may alſo be affirmed to be made by God, as ſaith the author of a book, going under the name of *Auctor Cauſarum*, "Whatſoever the ſecond cauſe doth, that doth the firſt cauſe, but in a more excellent manner." Wherefore king Jehoſhaphat ſays to his judges (2 Chron. xix. 6), "Take heed what you do, for you judge not for man, but for the Lord, who is with you in the judgment;" whereby you are inſtructed, that to ſtudy the laws, though of human

inſtitution, is in effect to ſtudy the laws of God; which therefore cannot but afford a pious and devout entertainment. But neither was it out of devotion only, as you rightly judge, that Moſes commanded the kings of Iſrael to read the book of Deuteronomy rather than any other part of the Pentateuch, ſince all of them abound in matter for a devout and holy contemplation; to meditate on which is the part of every good man: the true reaſon of this command is that in the book of Deuteronomy, the laws, whereby the kings of Iſrael were obliged to govern their ſubjects, are more expreſsly, more explicitly particularized than in any other of the books of the Old Teſtament, as the circumſtances of the command do plainly evince. Wherefore, my Prince, the ſame cauſe does no leſs exhort you than the kings of Iſrael, that you ought to be a ſtudious enquirer into thoſe laws, whereby you may be hereafter qualified to govern your ſubjects. For, what is ſaid to the kings of Iſrael muſt be figuratively intended to be ſpoken to every king who bears rule over a people, who know and worſhip the true God. Upon the whole, could anything be more fitly or more uſefully offered to your conſideration, than this command enjoined to the kings of Iſrael, to read and ſtudy their law? Since, not only the example, but the typical authority thereof inſtructs and obliges you to behave conformably to the laws of that kingdom, to the crown whereof, with the permiſſion of Divine Providence, you are in due courſe of time apparently to inherit.

Chap. IV.

He proves that a Prince by the Laws may be made happy.

THE Laws, my dear Prince, do not only, with the Prophet, ſaying, "Come, ye children, hearken unto me, I will teach you the fear of the Lord" (Ps. xxxiv. 11), call on you to fear God, whereby you may become wiſe; but the ſame laws alſo invite you to be exerciſed in them, that you may attain to felicity and happineſs, as far as they are attainable in this life. For all the philoſophers, who have argued ſo differently about happineſs, have agreed in this, that happineſs is the end of all human deſires, for which reaſon they call it the *ſummum bonum*, the greateſt or chief good: the Peripatetics placed it in virtue; the Stoics in what is honeſt; and the Epicureans in pleaſure; but, inaſmuch as the Stoics defined that to be honeſt which is done well and laudably, according to the rules of virtue; and the Epicureans aſſerted that nothing is or can be pleaſant without virtue; all thoſe ſects, according to Leonardus Aretinus, in his Introduction to Moral Philoſophy, have concurred in this, that it is virtue alone which procures and effects happineſs, wherefore Ariſtotle (Lib. 7. Polit.), defining happineſs, ſays, "That it is the perfect exerciſe of all the virtues." This being granted, I deſire you to conſider what will follow from theſe premiſſes. Human laws are no other than rules whereby the perfect

notion of juſtice can be determined: but that juſtice, which thoſe laws diſcover, is not of the commutative or diſtributive kind, or any one particular diſtinct virtue, but it is virtue abſolute and perfect, and diſtinguiſhed by the name of Legal Juſtice, which the ſame L. Aretinus affirms to be therefore perfect, becauſe it utterly rejects and diſcountenances whatever is vicious, and teaches an univerſal virtue, for which it is deſervedly called, ſimply, by the name of virtue in the general; concerning which thus Homer and Ariſtotle, "It is the moſt excellent of all the virtues, and that nor morning nor evening ſtar is ſo bright or lovely as this." This juſtice is the ſubject of the royal care, without which a king cannot act in his judicial capacity as he ought to do, and without which he cannot juſtly engage in any war: but this being once attained and ſtrictly adhered to, the whole regal office will, in all reſpects, be adequately and completely diſcharged; ſo that, to ſum up what we have ſaid, happineſs conſiſts in the perfect exerciſe of all the virtues; and ſince that juſtice which is taught and acquired by the law, is univerſal virtue, it follows that he who has attained this juſtice is made happy by the laws, conſequently has attained the *ſummum bonum* or beatitude, ſince that and happineſs in this fleeting life mean the ſame thing. Not that the law itſelf can do this excluſive of divine grace: nor will you be able to learn either what is law or virtue without it, not ſo much as in the inclination to it. For, as Pariſienſis ſays, "The internal appetitive virtue of man is ſo vitiated by original ſin, that vicious practices reliſh pleaſantly, and the works of virtue ſeem harſh and difficult." Wherefore, that ſome give themſelves up to admire and follow virtue, is owing to the grace of God, and not their own natural ſtrength or uprightneſs of diſpoſition. May I not now aſk the queſtion, Whether the laws, which through the divine concurrence work ſuch good effects, as I have laid before you, are not to be ſtudied with the utmoſt application? ſince he, who hath a juſt notion of them, is in the way to arrive at that felicity, which, according to the philoſophers, is the end and completion of all human deſires, and the chief good of this life. Though what I have hitherto offered is of general conſideration only, and therefore may not ſeem to concern you, as you are heir apparent to a crown; yet the words of the Prophet lay an obligation on you, even in that capacity, to apply yourſelf to the ſtudy of the law, when he ſays, "Be inſtructed, ye judges of the earth" (Ps. ii. 10). The Prophet does not here perſuade to the learning of any mechanical art or trade, nor yet of any ſcience in theory, how proper or beneficial ſoever to mankind; for he does not ſay in general, Be inſtructed, ye inhabitants of the earth, but addreſſes himſelf in a particular manner to the kings or rulers of this world, and exhorts them to the ſtudy of the law, according to which they ought to adminiſter juſtice and judgment to their people: "Be inſtructed, ye judges of the earth." It follows, "leſt at any time the Lord be angry, and ye periſh from the right way." Neither, great Sir, do the Scriptures only oblige you to be inſtructed in the laws, by which juſtice is to be learned and attained, but in another place gives it you in charge to love juſtice herſelf, ſaying, "Love righteouſneſs, ye that be judges of the earth" (Wiſdom i. 1).

Chap. V.

Ignorance of the Laws cauſes a contempt thereof.

BUT, Sir, how will you love righteouſneſs, or juſtice, unleſs you firſt acquire a competent knowledge of the laws, by which juſtice is to be learned and known; for, as the Philoſopher ſays, "Nothing is admired or loved unleſs it be known," which made the orator Fabius ſay, "That it would be well with the arts and ſciences, if artiſts were only to make a judgment of them." What is not known is ſo far from being loved, that it is uſually deſpiſed, as ſaith a certain poet,

The ruſtic what he knows not always ſlights.

Nor is this the way of the clown only, but of men of learning and ſkill in the liberal arts and ſciences. Suppoſe, for inſtance, a natural philoſopher, who had never ſtudied either the mathematics, or metaphyſics, ſhould be told by a metaphyſician that his ſcience conſiders things abſtracted from all matter and motion, both as to their eſſence or reality, and as to our conception of them: the mathematician aſſerts that his ſcience conſiders things in reality conjoined to matter and motion, but ſeparated from them in our conception: it is certain that our naturaliſt, who was never acquainted with anything ſeparated from matter and motion, either in reality or conception, would not forbear laughing at both of them, and would be apt to deſpiſe their reſpective ſciences, though of a ſublimer nature than his own; and that for no other reaſon, but becauſe he is perfectly unacquainted with them. So, my Prince, would you in like manner be ſurpriſed at a lawyer who ſhould aſſert that one brother ſhall not ſucceed in the father's inheritance to another brother, who is not born of the ſame mother, but that the inheritance ſhall rather deſcend to the ſiſter of the whole blood, or it ſhall come to the lord of the fee by way of eſcheat: you would be ſurpriſed, I ſay, at this, as not knowing the reaſon of the law in this particular caſe. Whereas the ſeeming difficulty of this caſe gives no perplexity at all to ſuch as are ſkilled in the common law of England, which confirms the vulgar ſaying, "The arts and ſciences have no enemy but the unlearned.

But far be it, my Prince, that you ſhould prove averſe, or an enemy to the laws of that country to which you will in time inherit by right of ſucceſſion, when the above-cited text of Scripture inſtructs you to love righteouſneſs. Wherefore, moſt noble Prince, permit me again and again to importune and beſeech you to inform yourſelf thoroughly in the laws of your father's kingdom, not only that you may avoid the inconveniences I have mentioned, but becauſe the mind of man, which has a natural propenſity to what is good, and can deſire nothing but as it has the appearance of good, as ſoon as by inſtruction it comes to a

perfect knowledge of that good, it rejoices, takes pleaſure therein, and as it improves by reflections, the pleaſure grows more and more; from whence you may infer that when you come to be inſtructed in thoſe laws to which you are at preſent a ſtranger, you will moſt certainly affect and love them, becauſe they are excellent in their nature and reaſon; and the more you know of them, the more will you be entertained and pleaſed. For what is once loved does by uſe transform the perſon into its very nature: according to the Philoſopher, "Uſe becomes a ſecond nature." So the ſcion of a pear-tree grafted on an apple-ſtock, after it has taken, draws the apple ſo much into its nature, that both become a pear-tree, and are called ſo from the fruit which they produce. So, virtue put in practice grows into a habit, and imparts its very name to thoſe who practiſe it: as we ſay of one who is indued with modeſty, continence, or wiſdom, that he is modeſt, continent, wiſe. So you, my Prince, when you ſhall have practiſed juſtice with delight and pleaſure, and have, as it were, tranſcribed the law, with the rule of juſtice, into your very habit and diſpoſition, will deſervedly obtain the character of a juſt prince; and, as ſuch, be ſaluted with thoſe agreeable words of the Pſalmiſt, "Thou loveſt righteouſneſs, and hateſt wickedneſs, therefore God, thy God, ſhall anoint thee with the oil of gladneſs above thy fellows" (Ps. xlv. 7).

Chap. VI.

A repetition of his exhortation.

AND now, moſt gracious Prince, are not theſe arguments, which I have offered, abundantly ſufficient to induce you to the ſtudy of the law? Since thereby you will acquire a habit of juſtice, be honoured with the name and character of a juſt prince; not to ſay, that you will thereby alſo avoid the imputation and diſgrace which attends ignorance; and moreover you will thereby attain to that, which all men covet after, happineſs, as far as it is attainable in this life; and through that fear of God which is the trueſt wiſdom, and that charity or love of God which, in the peace and ſatisfaction of it, paſſes all underſtanding, being, as it were, united to the beſt and greateſt Being, the fountain of all happineſs and perfection, you will become, to uſe the Apoſtle's expreſſion, one ſpirit with him.

But, becauſe theſe things, as I ſaid, cannot be wrought in you merely by the law, without the ſpecial aſſiſtance of divine grace, it is neceſſary that you implore for that above all things; as alſo that you ſearch diligently into the knowledge of the divine law, as contained in the Holy Scriptures. For Holy writ ſaith, "Vain are all men by nature who are ignorant of God" (Wiſdom xiii. 1). I adviſe you, therefore, my Prince, that whilſt you are young, and your ſoul is, as it were, a virgin-table, a blank ſpace—you write it full

with ſuch things as I have above hinted at, leſt afterwards it be more pleaſantly, though deluſively, filled with characters of little or no importance, according to the ſaying of a certain author:

The veſſel its firſt tincture long retains.

What mechanic is there ſo inattentive to the advantage of his child, as not to inſtruct him in his trade while he is young, whereby he may afterwards gain a comfortable ſubſiſtence? So the carpenter teaches his ſon to handle the axe: the ſmith brings up his at the anvil; a perſon deſigned for the ſacred office of the miniſtry is bred in a liberal way, at ſchool: ſo it becomes a king to have his ſon, who is to ſucceed him, inſtructed in the laws of his country whilſt he is yet young. Which rule, if kings would but obſerve, the world would be governed with a greater equality of juſtice than now it is. And, if you pleaſe to follow the advice I give, you will ſhow an example of no ſmall conſequence to other princes, perſons of the ſame high rank and diſtinction with yourſelf.

Chap. VII.

The Prince yields his attention but propoſes his doubts.

THE Chancellor having ended, the Prince began as follows: You have overcome me, good Chancellor, with your agreeable diſcourſe; and have kindled within my breaſt a more than ordinary thirſt after the knowledge of the law. There are two things, nevertheleſs, which make me fluctuate, ſo that, like a ſhip in a ſtorm, I know not which way to direct my courſe. One is, when I recollect how many years ſtudents of the law are taken up, before they arrive at any competent knowledge of it; which diſcourages me, leſt I employ all my younger years in like manner: another thing is, whether to apply myſelf to the ſtudy of the laws of England, or of the Civil Laws, which are ſo famous throughout the univerſe: for a kingdom ought to be governed by the beſt of laws, according to the Philoſopher, "Nature always covets what is beſt." Wherefore I would willingly attend what you adviſe in this matter. To whom the Chancellor: Sir! there is no ſuch myſtery in theſe things, as to require abundance of deliberation; and therefore I ſhall give you my thoughts upon the matter without keeping you in ſuſpenſe.

Chap. VIII.

What knowledge of the Law is neceſſary for a Prince.

THE Philoſopher, in the firſt of his Phyſics, ſays, "'Tis ſuppoſed that we then know everything, when we apprehend the cauſes and principles thereof as high up as the firſt elements:" upon which the Commentator obſerves, that by principles, Ariſtotle meant the efficient cauſes, that by cauſes, the final cauſes are intended, and by elements the matter and form: now in the laws there are not, properly ſpeaking, matter and form, theſe being what go to the compoſition of natural things; but ſomething analogous to them, however, viz., certain elements, out of which they ariſe, as Cuſtoms, Statutes, or Acts of Parliament, and the Law of Nature: whereof the laws of particular kingdoms conſiſt, as natural things do, of matter and form; what we read or write conſiſts of letters, which are called the elements of reading and writing. As for the Principia, which the Commentator calls the efficient cauſes, theſe are no other than certain Univerſalia, which the learned in the law, as well as mathematicians, call Maxims, in rhetoric they are called Paradoxes, the civilians call them Rules of Law. They are not diſcoverable by ſtreſs of arguments or logical demonſtrations, but as is ſaid (Secundo Poſteriorum) by induction, by the aſſiſtance of the ſenſes and the memory: wherefore, in the firſt of his Phyſics, Ariſtotle has it, that "Principles are not made up of other things, nor one of another. But other things proceed from them;" wherefore, according to the ſame author in the firſt of his Topics, it is, that "every principle carries its own evidence with it, ſo that there is no diſputing with thoſe who deny firſt principles:" becauſe, as the ſame Philoſopher writes in the firſt of his Ethics, "Principles do not admit of proof by reaſon and argument." Whoſoever therefore deſires to get a competent underſtanding in any faculty of ſcience, muſt by all means be well inſtructed in the principles thereof. For, by reaſoning from theſe principles, which are univerſally acknowledged and uncontеſted, we arrive at length at the final cauſes of things. So that, whoever is ignorant of theſe three, the principles, cauſes, and elements of any ſcience muſt needs be totally ignorant of the ſcience itſelf; on the other hand, when theſe are known, the ſcience itſelf is known too, at leaſt in general and in the main; though not diſtinctly and completely.

So we judge that we know the law of God, in knowing what is faith, hope, charity the ſacraments and God's commandments: leaving other myſteries in Divinity to thoſe who preſide in the Church. Wherefore our bleſſed Saviour ſays to his diſciples, "Unto you it is given to know the myſteries of the kingdom of God, but to others in parables, that ſeeing they might not ſee, and hearing they might not underſtand." And the Apoſtle cautions, "Not to think of one's ſelf more highly than we ought to think" (Rom. xii. 3 and 16).

And, in another place, "Not to mind high things, not to be wiſe in our own conceits." So my Prince, there will be no occaſion for you to ſearch into the arcana of our laws with ſuch tedious application and ſtudy; it will be ſufficient, as you have made ſome progreſs in grammar, to uſe the ſame method and proportion in the ſtudy of the laws. As to grammatical learning, which conſiſts of Etymology, Orthography, Proſodia, and Syntax, as ſo many ſprings or fountains running together to complete it; you are not ſo perfect a maſter, it is true, as to be acquainted with all the particular rules and exceptions comprehended under each of theſe; but yet that general knowledge of grammar, which you have acquired, is ſufficient for your purpoſe, from whence you may be juſtly ſtyled a grammarian. In like manner you may be deemed a lawyer in ſome competent degree, when, as a learner, you ſhall become acquainted with the principles, cauſes, and elements of the law. It will not be convenient, by ſevere ſtudy, or at the expenſe of the beſt of your time, to pry into nice points of law; ſuch like matters may be left to your judges and counſel, who in England are called Serjeants at Law, and others well ſkilled in it, whom in common ſpeech we call Apprentices of the law: you will better pronounce judgments in your courts by others than in perſon: it being not cuſtomary for the kings of England to ſit in court, or pronounce judgments themſelves; and yet they are called the king's judgments, though pronounced and given by others: as Jehoſhaphat aſſerted, that "they judged not for man, but for the Lord, who was with him in the judgment" (II Chron. xix. 6.) Wherefore, moſt gracious Prince, you will ſoon, with a moderate application, be ſufficiently inſtructed in the Laws of England, if ſo be you give your mind to it. Seneca, in an epiſtle to Lucillus, ſays, "There is nothing but what great pains and diligent care will get the better of." I know very well the quickneſs of your apprehenſion and the forwardneſs of your parts; and I dare ſay, that in thoſe ſtudies, though a knowledge and practice of twenty years is but barely ſufficient to qualify for a judge, you will acquire a knowledge ſufficient for one of your high quality, within the compaſs of one year; and in the meanwhile attend to, and inure yourſelf to martial exerciſes, to which your natural inclination prompts you on ſo much, and ſtill make it your diverſion, as ſhall beſt pleaſe you, at your leiſure.

Chap. IX.

A King whoſe government is political cannot change the Laws.

THE next thing, my Prince, at which you ſeem to heſitate, ſhall, with the ſame eaſe, be removed and anſwered, that is, whether you ought to apply yourſelf to the ſtudy of the Laws of England, or to that of the Civil Laws, for that the opinion is with them everywhere, in preference to all other human laws: let not this

difficulty, Sir! give you any concern. A king of England cannot, at his pleaſure, make any alterations in the laws of the land, for the nature of his government is not only regal, but political. Had it been merely regal, he would have a power to make what innovations and alterations he pleaſed in the laws of the kingdom, impoſe tallages and other hardſhips upon the people, whether they would or no, without their conſent, which ſort of government the Civil Laws point out, when they declare "Quod principi placuit legis habet vigorem:" but it is much otherwiſe with a king whoſe government is political, becauſe he can neither make any alteration or change in the laws of the realm without the conſent of the ſubject, nor burthen them againſt their wills, with ſtrange impoſitions, ſo that a people governed by ſuch laws as are made by their own conſent and approbation, enjoy their properties ſecurely, and without the hazard of being deprived of them, either by the king or any other: the ſame things may be effected under an abſolute prince, provided he do not degenerate into the tyrant. Of ſuch a prince, Ariſtotle, in the third of his Politics, ſays, "It is better for a city to be governed by a good man than by good laws." But becauſe it does not always happen that the perſon preſiding over a people is ſo qualified, St. Thomas, in the book which he wrote to the king of Cyprus (De Regimine Principum), wiſhes that a kingdom could be ſo inſtituted, as that the king might not be at liberty to tyrannize over his people; which only comes to paſs in the preſent caſe; that is, when the ſovereign power is reſtrained by political laws. Rejoice, therefore, my good Prince, that ſuch is the law of that kingdom to which you are to inherit, becauſe it will afford, both to yourſelf and ſubjects, the greateſt ſecurity and ſatisfaction. With ſuch a law, ſaith the ſame St. Thomas, all mankind would have been governed, if, in the Paradiſe, they had not tranſgreſſed the command of God. With the ſame was the whole nation of the Jews governed, under the theocracy, when God was their king, who adopted them for his peculiar people: till, at length, upon their own requeſt, having obtained another ſort of king, they ſoon found reaſon to repent them of their fooliſh and raſh choice, and were ſufficiently humbled under a deſpotic government: but, when they had good kings, as ſome there were, the people proſpered and lived at eaſe; but when they were otherwiſe, their condition was both wretched and without redreſs. Of this you may ſee a particular account in the Book of the Kings. This ſubject being ſufficiently diſcuſſed in a ſmall piece I formerly drew up on purpoſe for your uſe, concerning the Law of Nature, I ſhall forbear at preſent to enlarge.

Chap. X.

The Prince propoſes a queſtion.

PRINCE. How comes it to paſs, my Chancellor, that one king may govern his ſubjects in ſuch an abſolute manner, and a power in the ſame extent is unlawful for another king: ſeeing kings are equal in dignity, I am ſurpriſed that they are not likewiſe equal in the extent and exerciſe of their power.

Chap. XI.

The Chancellor's anſwer.

CHANCELLOR. I have, Sir! in the ſmall piece referred to, ſufficiently made appear, that the king who governs by political rules has no leſs power than him who governs his ſubjects at his mere will and pleaſure; yet, that the authority which each has over their ſubjects is vaſtly different, I never diſputed. The reaſon of which I ſhall, in the beſt manner I can, endeavour to explain.

Chap. XII.

How kingdoms ruled by regal government firſt began.

FORMERLY, men who excelled in power, being ambitious of honour and renown, ſubdued the nations which were round about them by force of arms; they obliged them to a ſtate of ſervitude, abſolutely to obey their commands, which they eſtabliſhed into laws, as the rules of their government. By long continuance and ſuffering whereof, the people, though under ſuch ſubjection, finding themſelves protected by their governors from the violence and inſults of others, ſubmitted quietly to them, thinking it better to be under the protection of ſome government, than to be continually expoſed to the ravages of every one who ſhould take it in their heads to oppreſs them. From this original, and reaſon, ſome kingdoms date their commencement, and the perſons inveſted with the power, during ſuch their government, from ruling, (*regendo*), aſſumed and uſurped to themſelves the name of ruler, or king (*rex*), and their power obtained the name of regal. By theſe methods it was that Nimrod firſt acquired to himſelf a kingdom,

though he is not called a king in the Scripture, but a mighty hunter before the Lord. For as an hunter behaves towards beaſts, which are naturally wild and free, ſo did he oblige mankind to be in ſervitude and to obey him. By the ſame methods Belus reduced the Aſſyrians; ſo did Ninus by the greateſt part of Aſia: thus the Romans arrived at univerſal empire: in like manner kingdoms began in other parts of the world. Wherefore, when the children of Iſrael deſired to have a king, as all the nations round about them then had, the thing diſpleaſed God, and he commanded Samuel to ſhow them the manner of the king who ſhould reign over them, and the nature of his government; that is, mere arbitrary will and pleaſure, as is ſet forth at large, and very pathetically, in the firſt Book of Samuel. And thus, if I miſtake not, moſt excellent Prince, you have had a true account how thoſe kingdoms firſt began, where the government is merely regal. I ſhall now endeavour to trace the original of thoſe kingdoms, where the form of government is political, that ſo, the firſt riſe and beginning of both being known, you may more eaſily diſcern the reaſon of that wide difference which occaſioned your queſtion.

Chap. XIII.

How Kingdoms ruled by Political Government firſt began.

ST. AUGUSTINE, in his book De Civitate Dei, has it, "That a people is a body of men joined together in ſociety by a conſent of right, by an union of intereſts, and for promoting the common good;" not that a people ſo met together in ſociety can properly be called a body as long as they continue without a head; for, as in the body natural, the head being cut off, we no longer call it a body, but a trunk; ſo a community without a head to govern it, cannot in propriety of ſpeech be called a body politic. Wherefore the Philoſopher, in the firſt of his politics, ſays, "Whenſoever a multitude is formed into one body or ſociety, one part muſt govern, and the reſt be governed." Wherefore it is abſolutely neceſſary, where a company of men combine and form themſelves into a body politic, that ſome one ſhould preſide as the governing principal, who in kingdoms goes uſually under the name of king (*rex, a regendo*). In this order, as out of an embryo, is formed an human body, with one head to govern and control it; ſo from a confuſed multitude is formed a regular kingdom, which is a ſort of a myſtical body, with one perſon as the head, to guide and govern. And as in the natural body, according to the Philoſopher, the heart is the firſt thing which lives, having in it the blood which it tranſmits to all the other members, thereby imparting life, and growth, and vigour; ſo in the body politic the firſt thing which lives and moves is the intention of the people, having in it the blood, that is, the prudential care and proviſion for the public good, which it tranſmits and

communicates to the head, as the principal part, and to all the reſt of the members of the ſaid body politic, whereby it ſubſiſts and is invigorated. The law under which the people is incorporated may be compared to the nerves or ſinews of the body natural; for, as by theſe the whole frame is fitly joined together and compacted, ſo is the law that ligament, to go back to the trueſt derivation of the word *lex*, *à ligando*, by which the body politic and all its ſeveral members are bound together and united in one entire body. And as the bones and all the other members of the body preſerve their functions, and diſcharge their ſeveral offices by the nerves, ſo do the members of the community by the law. And as the head of the body natural cannot change its nerves or ſinews, cannot deny to the ſeveral parts their proper energy, their due proportion and aliment of blood, neither can a king, who is the head of the body politic, change the laws thereof, nor take from the people what is theirs by right, againſt their conſents. Thus you have, Sir, the formal inſtitution of every political kingdom, from whence you may gueſs at the power which a king may exerciſe with reſpect to the laws and the ſubject. For he is appointed to protect his ſubjects in their lives, properties, and laws; for this very end and purpoſe he has the delegation of power from the people; and he has no juſt claim to any other power but this. Wherefore, to give a brief anſwer to that queſtion of yours concerning the different powers which kings claim over their ſubjects, I am firmly of opinion that it ariſes ſolely from the different natures of their original inſtitution, as you may eaſily collect from what has been ſaid. So the kingdom of England had its original from Brute, and the Trojans who attended him from Italy and Greece, and became a mixed kind of government, compounded of the regal and political. So Scotland, which was formerly in ſubjection to England in the nature of a duchy, became a government partly regal, partly political. Many other kingdoms, from the ſame original, have acquired the ſame form of government; whence Diodorus Siculus, in his ſecond book of Ancient Hiſtory, concerning the Egyptians, ſays thus: "The kings of Egypt originally did not live in ſuch a licentious manner as other kings, whoſe will was their law; but were ſubject to the ſame law, in common with the ſubject, and eſteemed themſelves happy in ſuch a conformity to the laws." For it was their opinion that many things were done by thoſe who gave a looſe to their own will, which expoſed them to frequent and great dangers and diſadvantages. The ſame author in his fourth book writes thus: "He who is choſen king of Ethiopia leads a life conformable to the laws, and behaves in every reſpect according to the cuſtoms of his country, neither rewarding nor puniſhing any one, but according to the laws handed down from his predeceſſors." In like manner he writes concerning the King of Saba, in Arabia Felix: in the ſame manner concerning other kings in ancient hiſtory who, purſuing the ſame methods of government, reigned proſperouſly and with reputation.

Chap. XIV.

The Prince abridges the two foregoing Chapters.

PRINCE. You have, my good Chancellor, with the perſpicuity of your diſcourſe, diſpelled that darkneſs with which my underſtanding was obſcured, and I now perceive plainly that no nation ever formed themſelves into a kingdom by their own compact and conſent, with any other view than this, that they might hereby enjoy what they had againſt all dangers and violence, in a ſecurer manner than before; and conſequently they would find themſelves diſappointed of their intention, if afterwards the king they had ſo ſet over them ſhould deſpoil them of their properties, which was not lawful for any of the community to do before ſuch appointment made. And the people would be in yet a more diſmal ſtate in caſe they were to be governed by ſtrange and foreign laws, ſuch as they had not been uſed to, ſuch as they could not approve of: more eſpecially if thoſe laws ſhould affect them in their properties, for the preſervation whereof, as well as of their perſons, they freely ſubmitted to kingly government; it is plain that ſuch a power as this could never originally proceed from the people; and if not from them, the king could have no ſuch power rightfully at all. On the other hand, I conceive it to be quite otherwiſe with that kingdom which becomes ſo by the ſole authority and abſolute power of the king. In this caſe the people become ſubject to him upon no other terms but to obey and be governed by his laws, that is, his mere will and pleaſure. Neither, Sir, has it ſlipt my memory, what you have elſewhere, with ſolid reaſons, demonſtrated in your treatiſe, concerning the Law of Nature, that the power of both kings is in effect equal; ſeeing a poſſibility of doing amiſs, which is the only privilege the one enjoys above the other, cannot be called an addition of power, any more than a poſſibility to decay or die, which, as it is only a poſſibility of being deprived of ſomething valuable, ſuch as life or health, is for this reaſon rather to be called a ſtate of impotency, a real weakneſs. "For power," as Boetius obſerves, "is always for ſome good end or purpoſe; and therefore to be able to do miſchief, which is the ſole prerogative an abſolute prince enjoys above the other, is ſo far from increaſing his power, that it rather leſſens and expoſes it. The bleſſed ſpirits above, which are already fixed in their ſeats of happineſs, and put beyond a poſſibility of ſinning, are in that reſpect ſuperior to us in power, who are always liable to do amiſs, and to work iniquity with greedineſs. It only now remains to inquire whether the law of England, to the ſtudy whereof you invite me, be as well adapted and effectual for the government of that kingdom as the Civil Law, by which the holy Roman Empire is regulated, is generally thought to be, for the government of the reſt of the world. Satisfy me but in this point by ſome clear and convincing proof, and I will immediately apply myſelf to the ſtudy you propoſe, without troubling you with any more of my ſcruples.

Chap. XV.

All laws are the Law of Nature, Cuſtoms, or Statutes.

CHANCELLOR. I obſerve, Sir, that you have given attention, and remember well what I have hitherto been diſcourſing upon, therefore you have the better title to receive an anſwer to your queſtion. Know, then, that all human laws are either the Law of Nature, Cuſtoms, or Statutes, which are alſo called Conſtitutions; but the two former, when they are reduced into writing, and made public by a ſufficient authority of the Prince, and commanded to be obſerved, they then paſs into the nature of, and are accepted as conſtitutions or ſtatutes, and, in virtue of ſuch promulgation and command, oblige the ſubject to the obſervance of them under a greater penalty than otherwiſe they could do. Such are a conſiderable part of the civil laws which are digeſted in great volumes by the Roman Emperors, and by their authority commanded to be obſerved: whence they obtain the name of the Civil Law, in like manner as all other imperial edicts or ſtatutes. If, therefore, under theſe three diſtinctions of the Law of Nature, Cuſtoms, and Statutes, the fountains and originals of all laws, I ſhall prove the law of England eminently to excel, then I ſhall have evinced it to be good and effectual for the government of that kingdom. Again, if I clearly make out that it is as well accommodated for the good of that State as the Civil Laws are for that of the empire, then I ſhall have made appear that the law of England is not only an excellent law, but that, in its kind, it is as well choſen as the Civil Law. In proof of this, I proceed.

Chap. XVI.

The Law of Nature in all countries is the ſame.

THE Laws of England, as far as they agree with, and are deduced from, the Law of Nature, are neither better nor worſe in their deciſions than the laws of all other ſtates or kingdoms in ſimilar caſes. For, as the Philoſopher ſays, in the fifth of his Ethics, "The Law of Nature is the ſame, and has the ſame force all the world over." Wherefore I ſee no occaſion to enforce this point any farther; ſo now the inquiry reſts, what the cuſtoms and ſtatutes of England are; and, in the firſt place, we will conſider and look into the nature of thoſe cuſtoms.

Chap. XVII.

The Cuſtoms of England are of great antiquity.

THE realm of England was firſt inhabited by the Britons; afterwards it was ruled and civilized under the government of the Romans; then the Britons prevailed again; next, it was poſſeſſed by the Saxons, who changed the name of Britain into England. After the Saxons, the Danes lorded it over us, and then the Saxons prevailed a ſecond time; at laſt the Normans came in, whoſe deſcendants retain the kingdom at this day; and during all that time, wherein thoſe ſeveral nations and their kings prevailed, England has nevertheleſs been conſtantly governed by the ſame cuſtoms as it is at preſent; which, if they were not above all exception good, no doubt but ſome or other of thoſe kings, from a principle of juſtice, in point of reaſon, or moved by inclination, would have made ſome alteration, or quite aboliſhed them, eſpecially the Romans, who governed all the reſt of the world in a manner by their own laws. Again, ſome of the aforeſaid kings, who only got and kept poſſeſſion of the realm by the ſword, were enabled by the ſame means to have deſtroyed the laws and introduced their own. Neither the laws of the Romans, which are cried up beyond all others for their antiquity; nor yet the laws of the Venetians, however famous in this reſpect, their iſland being not inhabited ſo early as Britain; neither was Rome itſelf at that time built; nor, in ſhort, are the laws of any other kingdom in the world ſo venerable for their antiquity. So that there is no pretence to ſay or inſinuate to the contrary; but that the laws and cuſtoms of England are not only good, but the very beſt.

Chap. XVIII.

How Statutes are made in England.

IT only remains to be inquired whether the Statute Law of England be good or not. And as to that, it does not flow ſolely from the mere will of one man, as the laws do in thoſe countries which are governed in a deſpotic manner; where ſometimes the nature of the conſtitution ſo much regards the ſingle convenience of the legiſlator, whereby there accrues a great diſadvantage and diſparagement to the ſubject. Sometimes, alſo, through the inadvertency of the prince, his inactivity and love of eaſe, ſuch laws are unadviſedly made as may better deſerve to be called corruptions than laws. But

the ſtatutes of England are produced in quite another manner: not enacted by the ſole will of the prince, but with the concurrent conſent of the whole kingdom, by their repreſentatives in Parliament. So that it is morally impoſſible but that they are and muſt be calculated for the good of the people: and they muſt needs be full of wiſdom and prudence, ſince they are the reſult, not of one man's wiſdom only, or an hundred, but ſuch an aſſembly as the Roman Senate was of old, more than three hundred ſelect perſons, as thoſe who are converſant in the forms and method of ſummoning them to Parliament can more diſtinctly inform you. And if any bills paſſed into a law, enacted with ſo much ſolemnity and foreſight, ſhould happen not to anſwer the intention of the legiſlators, they can immediately be amended and repealed, in the whole, or in part, that is, with the ſame conſent and in the ſame manner as they were at firſt enacted into a law. I have thus laid before you, my Prince, every ſpecies of the laws of England; you will of yourſelf eaſily apprehend their nature, whether they be good or not, by comparing them with other laws; and, when you will find none to ſtand in competition with them, you muſt acknowledge them to be not only good laws, but ſuch in all reſpects as you yourſelf could not wiſh them to be better.

Chap. XIX.

The difference between the Civil Laws and the Laws of England.

ONE thing only remains to be explained, concerning which you have raiſed ſome ſcruples, that is, whether the laws of England are to be looked upon ſo uſeful, ſo well accommodated to the particular Conſtitution of England, as the civil imperial laws are for that of the empire. I remember a ſaying of yours, my Prince, that compariſons are odious; and therefore I am not very fond of making them. You will ſee better reaſons whereby to form your judgment, and which of the two laws may deſerve the preference, by conſidering wherein they differ, than by taking my opinion in the matter upon truſt. Where they agree, they are equally praiſeworthy; but in caſes where they differ, that law which is the moſt excellent in its kind, after mature conſideration, will eminently appear ſo to be: wherefore I ſhall produce ſome ſuch caſes, that you may weigh them in an equal balance, and thereby know for certain, which law is the more juſt and rational in its deciſions: and firſt, I ſhall propoſe ſome inſtances of caſes which appear to me the moſt conſiderable.

Chap. XX.

The firſt caſe wherein the Civil Laws and the Laws of England differ.

WHERE any have a controverſy depending before a Judge, and they come to a trial upon the matter of fact, which thoſe who are ſkilled in the laws of England term the iſſue of the plea in queſtion, the iſſue of ſuch plea, by the rules of the Civil Law, is to be proved by the depoſitions of witneſſes, and two witneſſes are held ſufficient: but, by the laws of England, the truth of the matter cannot appear to the Judge but upon the oath of twelve men of the neighbourhood where the fact is ſuppoſed to be done. Now, the queſtion is, which of thoſe two ways of proceeding, ſo different, is to be eſteemed the more rational and effectual for the diſcovery of the truth. That law which takes the beſt and moſt certain way of finding out the truth is, in that reſpect, preferable to the other, which is of leſs force and efficacy: in the examination hereof, I proceed thus.

Chap. XXI.

The inconveniences of Trials by Witneſſes only.

BY the courſe of Civil Law, the party who, upon the trial, holds the affirmative ſide of the queſtion, is to produce his witneſſes, whom he is at liberty to name at his pleaſure. On the other hand, a negative is incapable of being proved; I mean directly, though indirectly it is otherwiſe. Now, he may well be thought a perſon of an inconſiderable intereſt, and of leſs application, who, from the groſs of mankind and all his acquaintance, cannot find out two ſo devoid of conſcience and all faith who, through fear, inclination, affection, or for a bribe, will not be ready to gainſay the truth. So that the party, to make good his cauſe, is at his liberty to produce two of ſuch a ſtamp; and if the other party had ever ſo much mind to object againſt them, or their evidence, it will not always happen that they are or can be known by the party defendant in the cauſe, in order to call in queſtion their life and converſation, that as perſons of a profligate character they might be croſs-examined; upon which account their evidence might be ſet aſide: and, ſeeing their evidence is in the affirmative, it is not ſo capable of being overthrown by circumſtances, or any other indirect proofs. Who, then, can live ſecurely with reſpect to his life or eſtate under ſuch a law, which is ſo much in favour of any one who has a mind to do miſchief? And what two wicked wretches have uſually ſo little caution as not to form to themſelves beforehand a perfect ſtory of the fact about which they know they are to be examined, with every minute circumſtance attending it, as if they had been true and

real? "For the children of this world (as our Saviour ſays) are in their generation wiſer than the children of light." So wicked Jezebel produced in judgment two witneſſes, ſons of Belial, to impeach Naboth, whereby he loſt his life, and Ahab took poſſeſſion of his vineyard (1 Kings xxi. 11-16). Again, by the teſtimony of two elders, who were judges, Suſanna, the virtuous wife of Joacim, had been put to death as an adultereſs, had not God himſelf miraculouſly interpoſed to reduce her by a method ſo ſudden and inconceivable as carried the plain marks of inſpired wiſdom, and ſuch as was far above the natural attainments of a youth not yet arrived to maturity of years or judgment. For though, by varying in their evidence, he plainly convicted them to be falſe witneſſes, yet who but God alone could have foreſeen that they would thus have varied in their evidence, ſince there was no law which obliged them to be ſo exact in every little circumſtance as to remember under what kind of tree the fact alleged was committed? For the witneſſes of any criminal action are not ſuppoſed to take notice of every buſh, or other circumſtance of place, which ſeemed to import nothing, either as to the detecting or aggravating of the crime. But when thoſe wicked judges, in ſuch their wilful depoſition, varied concerning the ſpecies of the tree, their own words demonſtrated that they had prevaricated and deviated from the truth, whereby they had deſervedly incurred the ſentence of the law of Moſes, according to which they did unto them in ſuch ſort as they maliciouſly intended to do to their neighbour; and they put them to death.

You have, moſt gracious Prince, within your own memory, a remarkable inſtance how much juſtice may be perverted, in the caſe of Mr. John Fringe, who, after he had been in prieſts' orders for three years, was, by his own procurement, and the depoſition of two falſe witneſſes, who ſwore that he had been formerly contracted to a certain young girl, compelled to quit his orders and to marry her. After cohabiting with her fourteen years, and having had by her ſeven children, being at laſt convicted of high treaſon againſt your highneſs, in the very article of death, and in the hearing of a multitude of people, he declared that thoſe witneſſes had been ſuborned by him, and that what they depoſed was utterly falſe and groundleſs. Many like inſtances you may have heard of, where juſtice has been perverted by means of falſe witneſſes, even under judges of the greateſt integrity, as is notorious to thoſe who converſe with and know mankind. This ſort of wickedneſs, alas! is but too frequently committed.

Chap. XXII.

Concerning Torture.

FOR this reaſon the laws of France, in capital caſes, do not think it enough to convict the accuſed by evidence, leſt the innocent ſhould thereby be condemned; but they chooſe rather to put the accuſed themſelves to the rack, till they confeſs their guilt, than rely entirely on the depoſition of witneſſes, who very often, from unreaſonable prejudice and paſſion, ſometimes at the inſtigation of wicked men, are ſuborned, and ſo become guilty of perjury. By which over cautious and inhuman ſtretch of policy, the ſuſpected as well as the really guilty are, in that kingdom, tortured ſo many ways as is too tedious and bad for deſcription. Some are extended on the rack till their very ſinews crack, and the veins guſh out in ſtreams of blood: others have weights hung to their feet, till their limbs are almoſt torn aſunder, and the whole body diſlocated: ſome have their mouths gagged to ſuch a wideneſs for a long time, whereat ſuch quantities of water are poured in that their bellies ſwell to a prodigious degree, and then being pierced with a faucet, ſpigot, or other inſtrument for the purpoſe, the water ſpouts out in great abundance, like the whale, if one may uſe the compariſon, which, together with his prey, having taken in vaſt quantities of ſea-water, returns it up again in ſpouts to a very great height. To deſcribe the inhumanity of ſuch exquiſite tortures affects me with too real a concern, and the varieties of them are not to be recounted in a large volume. The civil laws themſelves, where there is a want of evidence in criminal caſes, have recourſe to the like methods of torture for ſifting out the truth. Moſt other kingdoms do the ſame: now, what man is there ſo ſtout or reſolute who has once gone through this horrid trial by torture, be he never ſo innocent, who will not rather confeſs himſelf guilty of all kinds of wickedneſs than undergo the like tortures a ſecond time? Who would not rather die once, ſince death would put an end to all his fears, than to be killed ſo many times, and ſuffer ſo many helliſh tortures, more terrible than death itſelf? Do you not remember, my Prince, a criminal, who, when upon the rack, impeached of treaſon a certain noble knight, a man of worth and loyalty, and declared that they were both concerned together in the ſame conſpiracy: and, being taken down from the rack, he ſtill perſiſted in the accuſation, leſt he ſhould again be put to the queſtion? Nevertheleſs, being ſo much hurt and reduced by the ſeverity of the puniſhment, that he was brought almoſt to the point of death, after he had the viaticum and Sacraments adminiſtered to him, he then confeſſed, and took a very ſolemn oath upon it, by the body of Chriſt; and as he was now, as he imagined, juſt going to expire, he affirmed that the ſaid worthy knight was innocent and clear of everything he had laid to his charge: he added that the tortures he was put to were ſo intolerable,

that, rather than ſuffer them over again, he would accuſe the ſame perſon of the ſame crimes; nay, his own father: though, when he ſaid this, he was in the bitterneſs of death when all hopes of recovery were over. Neither did he at laſt eſcape that ignominious death, for he was hanged; and at the time and place of his execution, he acquitted the ſaid knight of the crimes wherewith he had, not long before charged him. Such confeſſions as theſe, alas! a great many others of thoſe poor wretches make, not led by a regard to truth, but compelled to it by the exquiſiteneſs of their torments; now, what certainty can there ariſe from ſuch extorted confeſſions; but ſuppoſe a perſon falſely accuſed ſhould have ſo much courage, ſo much ſenſe of a life after this, as, amidſt the terrors of this fiery trial, like the three young Jews of old, (Dan. iii.), neither to diſhonour God nor lie to the damnation of his ſoul, ſo that the judge ſhould hereupon pronounce him innocent: does he not with the ſame breath pronounce himſelf guilty of all that cruel puniſhment which he inflicted upon ſuch perſon undeſervedly? And how inhuman muſt that law be which does its utmoſt to condemn the innocent, and convict the judge of cruelty? A practice ſo inhuman deſerves not indeed to be called a law, but the high road to hell. O Judge! in what ſchool of humanity did you learn this cuſtom of being preſent and aſſiſting while the accuſed wretch is upon the rack. The execution of the ſentence of the law upon criminals is a taſk fit only for little villains to perform, picked out from amongſt the refuſe of mankind, who are thereby rendered infamous for ever after, and unfit to act or appear in any court of juſtice. God Almighty does not execute his judgments on the damned by the miniſtration of angels, but of devils; in purgatory they are not good ſpirits which torment and exerciſe ſouls, though predeſtinated to glory, but evil ſpirits. In this world the wicked, by the permiſſion of God, inflict the evil of puniſhment on ſinners. For when God ſaid (1 Kings xxii. 20), "Who ſhall perſuade Ahab that he may go up and fall at Ramoth Gilead," it was an evil ſpirit which came forth and ſaid, "I will be a lying ſpirit in the mouth of all his prophets:" though God, for juſt reaſons, had determined to ſuffer Ahab to be perſuaded, and deceived by a lie, yet was it by no means becoming a good ſpirit to be employed on ſuch an errand. Perhaps the judge will ſay, I have done nothing of myſelf in inflicting theſe tortures, which are not by way of puniſhment, but trial; but how does it differ whether he does it himſelf while he is preſent on the bench, and, with reiterated commands, aggravates the nature of the crime, and encourages the officer in the execution of his office? It is only the maſter of the ſhip who brings her into port, though, in purſuance of his orders, others ply the ſteerage: for my own part, I ſee not how it is poſſible for the wound which ſuch a judge muſt give his own conſcience ever to cloſe up or be healed; as long, at leaſt, as his memory ſerves him to reflect upon the bitter tortures ſo unjuſtly and inhumanly inflicted on the innocent.

Chap. XXIII.

The Civil Law defective in doing juſtice.

FURTHER, if a right accrues to a man to plead upon a trial which ariſes from a contract, a fact done, a title of inheritance, or the like: in theſe caſes, if either there were no witneſſes at the firſt, or if they that were are dead, the plaintiff will be obliged to drop his action, unleſs he can prove his right by ſuch ſtrong circumſtantial proofs as are not to be evaded, which ſeldom happens. Where lordſhips and other poſſeſſions are in diſpute, and in all other actions which fall under the juriſdiction of the civil law, the actions of the plaintiffs are very often rendered incapable of being brought to an iſſue for want of evidence, ſo that ſcarce one half of them can attain the end propoſed: under what denomination, then, is that law to be ranged, which, where parties are injured, is ſo defective in making ſatisfaction? I queſtion whether ſuch a law can be called juſt, if that be true which this very law informs us, viz., "That juſtice gives to every one their due," which ſuch a law as this moſt certainly does not.

Chap. XXIV.

The diviſion of Counties, Sheriffs, and their appointment.

IT being thus explained how the Civil Laws direct the judge concerning the truth of a fact, which is brought on to trial, it remains to be explained how the Laws of England boult out the truth of a fact, when it comes in iſſue. The manner of proceeding in both laws being laid, and compared together, their qualities will appear the more eminently, according to that ſaying of the Philoſopher, "Oppoſites placed together give light to one another." But here, by way of introduction, and to borrow the rule or method uſed by orators, it may be neceſſary to premiſe ſome things, a right underſtanding whereof will help to let us into a more clear and diſtinct underſtanding of what follows. I proceed thus: England is divided into counties, as France is into balliwicks, or provinces, ſo that there is no place in England, which is not within the body of ſome county; counties are divided into hundreds, which in ſome parts of England are called wapentakes, and hundreds, again, are ſubdivided into vills, under which appellation cities and boroughs are included. The boundaries of thoſe vills are not aſcertained by walls, buildings or ſtreets; but, by a compaſs of fields, large diſtricts of land, ſome hamlets, and divers other limits; as rivers, water-courſes, woodlands, and waſtes of common, which there is now no occaſion to deſcribe

by their particular names; becauſe there is ſcarce any place in England, but what is within the limits of ſome vill, though there be certain privileged places within vills, which are not reputed as parts or parcels of ſuch vills; farther, there is in every county a certain officer, called the King's Sheriff, who, amongſt other duties of his office, executes within his county all mandates and judgments of the King's Courts of Juſtice: he is an annual officer; and it is not lawful for him, after the expiration of his year, to continue to act in his ſaid office, neither ſhall he be taken in again to execute the ſaid office within two years thence next enſuing. The manner of his election is thus: Every year, on the morrow of All-Souls, there meet in the King's Court of Exchequer, all the King's Counſellors, as well lords ſpiritual and temporal, as all other the King's Juſtices, all the Barons of the Exchequer, the Maſter of the Rolls, and certain other officers, when all of them, by common conſent, nominate three of every county Knights or Eſquires, perſons of diſtinction, and ſuch as they eſteem fitteſt qualified to bear the office of Sheriff of that county, for the year enſuing: the king only makes choice of one out of the three ſo nominated and returned. Who, in virtue of the King's Letters Patent, is conſtituted High Sheriff of that county, for which he is ſo choſen, for the year then next enſuing. But, before he can take upon him to act in conſequence of the ſaid Letters Patent, he ſhall ſwear upon the holy Evangeliſts, amongſt other clauſes, well, faithfully, and indifferently to execute and do his duty for that year, and that he will not receive anything, under pretext or colour of his ſaid office, from any one, other than and except from the King's Majeſty. This being premiſed, let us now proceed to thoſe other matters which fall in with our preſent inquiry.

Chap. XXV.

Jurors, how choſen and ſworn.

WHENSOEVER the parties, contending in the King's Courts, are come to the iſſue of the plea, upon the matter of fact, the juſtices forthwith, by virtue of the King's Writ, write to the Sheriff of the County, where the fact is ſuppoſed to be, that he would cauſe to come before them, at a certain day, by them appointed, twelve good and lawful men of the neighbourhood, where the fact is ſuppoſed, who ſtand in no relation to either of the parties who are at iſſue, in order to inquire, and know upon their oaths, if the fact be ſo as one of the parties alleges, or whether it be as the other contends it with him. At which day the Sheriff ſhall make return of the ſaid writ before the ſame Juſtices, with a panel of the names of them whom he had ſummoned for that purpoſe. In caſe they appear, either party may challenge the array, and allege, that the Sheriff hath acted therein partially, and in favour of the other party, viz., by ſummoning ſuch as are too much parties

in the cauſe and not indifferent; which exception, if it be found to be true upon the oath of two men of the ſame panel, pitched on by the Juſtices, the panel ſhall immediately be quaſhed, and then the Juſtices ſhall write to the coroners of the ſame county, to make a new panel; in caſe that likewiſe ſhould be excepted againſt, and be made appear to be corrupt and vicious, this panel ſhall alſo be quaſhed. Then the Juſtices ſhall chooſe two of the clerks in court, or others of the ſame county, who, ſitting in the court, ſhall upon their oaths make an indifferent panel, which ſhall be excepted to by neither of the parties; but, being ſo impanelled, and appearing in court, either party may except againſt any particular perſon; as he may at all times, and in all caſes, by alleging that the perſon ſo impanelled is of kin, either by blood, or affinity to the other party; or in ſome ſuch particular intereſt, as he cannot be deemed an indifferent perſon to paſs between the parties: of which ſort of exceptions there is ſo much variety as is impoſſible to ſhow in a ſmall compaſs: if any one of the exceptions be made appear to the court to be true and reaſonable, then he againſt whom the exception is taken, ſhall not be ſworn, but his name ſhall be ſtruck out of the panel: in like manner ſhall be done with all the reſt of the panel, until twelve be ſworn, ſo indifferent as to the event of the cauſe, that neither of the parties can have reaſonable matter of challenge againſt them: out of theſe twelve, four, at the leaſt, ſhall be hundredors, dwelling in the hundred, where the vill is ſituate, in which the fact diſputed is ſuppoſed to be; and every one of the jury ſhall have lands, or revenues, for the term of his life, of the yearly value at leaſt of twelve ſcutes.[1] This method is obſerved in all actions and cauſes, criminal, real, or perſonal; except where, in perſonal actions, the damages, or thing in demand, ſhall not exceed forty marks Engliſh money; becauſe, in ſuch like actions of ſmall value, it is not neceſſary, nor required, that the jurors ſhould be able to expend ſo much; but they are required to have lands, or revenues, to a competent value, at the diſcretion of the juſtices; otherwiſe they ſhall not be accepted; leſt, by reaſon of their meanneſs and poverty, they may be liable to be eaſily bribed, or ſuborned: and in caſe, after all exceptions taken, ſo many be ſtruck out of the panel that there does not remain a ſufficient number to make up the jury, then it ſhall be given in charge to the Sheriff, by virtue of the King's writ, that he add more jurors; which is uſually and often done, that the inquiry of the truth upon the iſſue in queſtion may not remain undecided for want of jurors. This is the form how jurors, who inquire into the truth, ought to be returned, choſen, and ſworn in the King's Courts of Juſtice; it remains to inquire and explain how they ought to be charged and informed as to their declaration of the truth of the iſſue between them.

[1] The ſcute, or crown, was a gold coin of the value of three ſhillings and four pence.

Chap. XXVI.

The way of proceeding in Civil Cauſes.

TWELVE good and true men being ſworn, as in the manner above related, legally qualified, that is, having, over and beſides their moveables, poſſeſſions in land ſufficient, as was ſaid, wherewith to maintain their rank and ſtation; neither ſuſpected by, nor at variance with either of the parties; all of the neighbourhood; there ſhall be read to them in Engliſh, by the Court, the Record and nature of the plea, at length, which is depending between the parties: and the iſſue thereupon ſhall be plainly laid before them, concerning the truth of which, thoſe who are ſo ſworn, are to certify the Court: which done, each of the parties, by themſelves or their counſel, in preſence of the Court, ſhall declare and lay open to the jury all and ſingular the matters and evidences, whereby they think they may be able to inform the Court concerning the truth of the point in queſtion; after which each of the parties has a liberty to produce before the Court all ſuch witneſſes as they pleaſe, or can get to appear on their behalf; who being charged upon their oaths, ſhall give in evidence all that they know touching the truth of the fact, concerning which the parties are at iſſue: and, if neceſſity ſo require, the witneſſes may be heard and examined apart, till they ſhall have depoſed all that they have to give in evidence, ſo that what the one has declared ſhall not inform or induce another witneſs of the ſame ſide, to give his evidence in the ſame words, or to the very ſame effect. The whole of the evidence being gone through, the jurors ſhall confer together, at their pleaſure, as they ſhall think moſt convenient, upon the truth of the iſſue before them; with as much deliberation and leiſure as they can well deſire, being all the while in the keeping of an officer of the Court, in a place aſſigned to them for that purpoſe, leſt any one ſhould attempt by indirect methods to influence them as to their opinion, which they are to give into the Court. Laſtly, they are to return into Court, and certify the Juſtices upon the truth of the iſſue ſo joined, in the preſence of the parties, if they pleaſe to be preſent, particularly the perſon who is plaintiff in the cauſe. What the jurors ſhall ſo certify in the laws of England, is called the verdict. In purſuance of which verdict, the Juſtices ſhall render and form their judgment. Notwithſtanding, if the party againſt whom ſuch verdict is obtained complain that he is thereby aggrieved, he may ſue out a writ of attaint, both againſt the jury, and alſo againſt the party who obtained it; in virtue of which, if it be found upon the oath of twenty-four men, returned in manner before obſerved, choſen and ſworn in due form of law, who ought to have much better eſtates than thoſe who were firſt returned and ſworn, that thoſe who were of the original panel and ſworn to try the fact, have given a verdict contrary to evidence, and their oath; every one of the firſt jury ſhall be committed to the public gaol, their

goods ſhall be confiſcated, the poſſeſſions ſeized into the king's hands, their habitations and houſes ſhall be pulled down, their woodlands ſhall be felled, their meadows ſhall be ploughed up, and they themſelves ſhall ever thenceforward be eſteemed, in the eye of the law, infamous, and in no caſe whatſoever are they to be admitted to give evidence in any Court of Record: the party, who ſuffered in the former trial, ſhall be reſtored to everything they gave againſt him, through occaſion of ſuch their falſe verdict: and who then (though he ſhould have no regard to conſcience or honeſty) being ſo charged upon his oath, would not declare the truth from the bare apprehenſions and ſhame of ſo heavy a puniſhment, and the very great infamy which attends a contrary behaviour? and if, perhaps, one or more amongſt them ſhould be ſo unthinking or daring as to proſtitute their character, yet the reſt of the jurors, probably, will ſet a better value on their reputations than ſuffer either their good name or poſſeſſions to be deſtroyed and ſeized in ſuch a manner. Now, is not this method of coming at the truth better and more effectual, than that way of proceeding which the Civil Laws preſcribe? No one's cauſe or right is in this caſe loſt, either by death or failure of witneſſes. The jurors returned are well known; they are not procured for hire; they are not of inferior condition; neither ſtrangers, nor people of uncertain characters, whoſe circumſtances or prejudices may be unknown. The witneſſes or jurors are of the neighbourhood, able to live of themſelves, of good reputation and unexceptionable characters, not brought before the Court by either of the parties, but choſen and returned by a proper officer, a worthy, diſintereſted and indifferent perſon, and obliged under a penalty to appear upon the trial. They are well acquainted with all the facts, which the evidences depoſe, and with their ſeveral characters. What need of more words? there is nothing omitted which can diſcover the truth of the caſe at iſſue, nothing which can in any reſpect be concealed from, or unknown to a jury who are ſo appointed and returned, I ſay, as far as it is poſſible for the wit of man to deviſe.

Chap. XXVII.

The way of proceeding in Capital Caſes.

IT becomes now abſolutely neceſſary to inquire thoroughly how the laws of England come at the truth in caſes criminal; whereby the form of proceedings in both laws being made appear, we may the better judge which law does moſt effectually diſcover the truth. If any ſuſpected perſon who ſtands accuſed for felony or treaſon committed in England denies the crime of which he ſtands accuſed before his judges, the ſheriff of the county where the fact is committed ſhall cauſe to come before the ſame judges twenty-four good and lawful men of the neighbourhood to the vill where the

fact was done, who are in no wife allied to the perſon accuſed, who have lands and revenues to the value of an hundred ſhillings; and they are to certify to the judges upon the truth of the fact, wherewith the party is charged. Upon their appearance in court, as they come to the book to be ſworn, before they be ſworn, the perſon accuſed may challenge them, in the ſame manner as is above deſcribed, and as is uſually done in real actions. Further, in favour of life, he may challenge five and thirty, ſuch as he moſt feareth and ſuſpecteth; who, upon ſuch challenge, ſhall be ſtruck out of the panel, or ſuch marks ſet over againſt their names, that (to uſe the term in law) they ſhall not paſs upon him in trial; and this peremptorily, without aſſigning any cauſe for ſuch challenge; and no exceptions are to be taken againſt ſuch his challenge. Who then in England can be put to death unjuſtly for any crime? ſince he is allowed ſo many pleas and privileges in favour of life: none but his neighbours, men of honeſt and good repute, againſt whom he can have no probable cauſe of exception, can find the perſon accuſed guilty. Indeed, one would much rather that twenty guilty perſons ſhould eſcape the puniſhment of death, than that one innocent perſon ſhould be condemned, and ſuffer capitally. Neither can there be any room for ſuſpicion, that in ſuch a courſe and method of proceeding a guilty perſon can eſcape the puniſhment due to his crimes; ſuch a man's life and converſation would be reſtraint and terror ſufficient to thoſe who ſhould have any inclination to acquit him. In a proſecution carried on in this manner there is nothing cruel, nothing inhuman; an innocent perſon cannot ſuffer in life or limb: he has no reaſon to dread the prejudices or calumny of his enemies, he will not, cannot, be put to the rack, to gratify their will and pleaſure. In ſuch a conſtitution, under ſuch laws, every man may live ſafely and ſecurely. Judge then, good Sir! which law is rather to be choſen, putting yourſelf in the private capacity of a ſubject.

Chap. XXVIII.

The Prince owns his conviction.

TO whom the Prince—— I ſee no difficulty at all in the caſe, my good Chancellor, to make me heſitate, or waver as to the choice I am to make; particularly in the manner you require and propoſe. For, who would not rather live under a law which renders life ſecure and happy, than where the law is found inſufficient for protection, and leaves a man defenceleſs, under a ſeries of inſults and barbarities from one's enemies? That man cannot in any wiſe be ſafe, either in his life or property, whom his adverſary, in many caſes which may happen, will have it in his power to convict out of the mouth of two witneſſes, ſuch as are unknown, produced in court, and pitched upon by the proſecutor. And, though in conſequence of their evidence he be not puniſhed with death,

yet an acquittal will not leave him in a much better condition after the queſtion has been put, which cannot but affect the party with a contraction of his ſinews and limbs, attended with conſtant diſorders and want of health. A man who lives under ſuch a government as you deſcribe, lives expoſed to frequent hazards of this ſort: enemies are deſigning and deſperately wicked. Witneſſes cannot well bring about ſuch a wicked device, when, what evidence they give in muſt be in open Court, in the preſence and hearing of a jury of twelve men, perſons of good character, neighbours where the fact was committed, appriſed of the circumſtances in queſtion, and well acquainted with the lives and converſations of the witneſſes, eſpecially as they be near neighbours, and cannot but know whether they be worthy of credit, or not; it cannot be a ſecret to every one of the jury what is done by or amongſt their neighbours. I know of myſelf more certainly what is a doing at this time in Barrois, where I reſide, than what is doing in England: neither do I think it poſſible that ſuch things can well eſcape the obſervation and knowledge of an honeſt man, as happen ſo near to his habitation, even though tranſacted with ſome kind of ſecrecy. But, ſince theſe things are ſo, I admire very much that the law of England, which in this reſpect is ſo commodious and deſirable, ſhould not obtain all the world over.

Chap. XXIX.

Why there are not Inqueſts of twelve men in other countries.

CHANCELLOR. At the time your highneſs was obliged to quit England, you were very young, conſequently the natural diſpoſition and qualities of your native country could not be known to you; had the caſe been otherwiſe, upon a compariſon of the advantages and properties of other countries with thoſe of your own, you would not be ſurpriſed at thoſe things which now agitate and diſturb you. England is a country ſo fertile, that, comparing it acre for acre, it gives place to no one other country: it almoſt produces things ſpontaneouſly, without man's labour or toil. The fields, the plains, groves, woodlands, all ſorts of lands, ſpring and proſper there ſo quick, they are ſo luxuriant, that even uncultivated ſpots of land often bring in more profit to the occupant than thoſe which are manured and tilled; though thoſe too are very fruitful in plentiful crops of corn. The feeding lands are likewiſe encloſed with hedge-rows and ditches, planted with trees, which fence the herds and flocks from bleak winds and ſultry heats, and are for the moſt part ſo well watered, that they do not want the attendance of the hind either day or night. There are neither wolves, bears, nor lions in England; the ſheep lie out a nights without their ſhepherds, penned up in folds, and the lands are improving at the ſame time: whence it comes to paſs that the inhabitants are ſeldom fatigued with hard labour, they lead a life

more ſpiritual and refined: ſo did the patriarchs of old, who choſe rather to keep flocks and herds, than to diſturb their peace of mind with the more laborious employments of tillage and the like: from hence it is that the common people of England are better inclined and qualified to diſcern into ſuch cauſes which require a nice examination than thoſe who dwell upon their farms, and are conſtantly employed in huſbandry affairs, whereby they contract a ruſticity of underſtanding. England is ſo thick-ſpread and filled with rich and landed men, that there is ſcarce a ſmall village in which you may not find a knight, an eſquire, or ſome ſubſtantial houſeholder, commonly called a Frankleyne, all men of conſiderable eſtates: there are others who are called Freeholders, and many Yeomen of eſtates ſufficient to make a ſubſtantial jury, within the deſcription before obſerved. There are ſeveral of thoſe Yeomen in England who are able to diſpend by the year a hundred pounds and more. Juries are very often made up of ſuch, and, in cauſes of conſequence, they conſiſt of knights, eſquires, and others, whoſe particular eſtates in the whole amount to upwards of three hundred pounds a year. Wherefore it is not to be imagined that perſons in ſuch wealthy circumſtances can be ſuborned or prevailed on to perjure themſelves; they are ſuppoſed to be reſtrained, not only through a religious principle, but alſo as they regard their honour and reputation, as they would avoid the very great ſcandal and detriment which muſt accrue by ſuch behaviour; and further, leſt the infamy ſhould extend to and affect their heirs. Other countries, my Prince, are not in ſuch a happy ſituation, are not ſo well ſtored with inhabitants. Though there be in other parts of the world perſons of rank and diſtinction, men of great eſtates and poſſeſſions, yet they are not ſo frequent, and ſo near ſituated one to another, as in England; there is nowhere elſe ſo great a number of land-owners: in a whole town in any other country you can ſcarce find a man of ſufficiency enough to be put upon a jury; for, except in large cities and walled towns, there are very few, beſides the nobility, who are poſſeſſors of eſtates or immoveable goods to any conſiderable value. The nobility do not keep in their hands any great ſcope of feeding-lands; it does not comport with their rank and quality to cultivate vineyards, or put their hands to the plough; and yet the main of their poſſeſſions conſiſts in vineyards and arable lands, except ſome meadow grounds which lie along the great rivers, and the woodlands, the paſture of which is in common to their tenants and neighbours. How can it then be that in ſuch countries a jury can be made up of twelve honeſt men of the neighbourhood near where any fact in queſtion is brought on to trial, ſeeing they cannot be well called of the neighbourhood who live at any remote diſtances? It will be very difficult to make up a jury of twelve men, though remote from the place where the fact in queſtion lies, after that the party accuſed ſhall have challenged his thirty-five peremptorily, who lived neareſt to the place. Wherefore in thoſe countries they muſt make up a jury, either of perſons living at great diſtances from the place where the fact was committed; perſons wholly unacquainted with the parties and their circumſtances; or the jury muſt conſiſt of people of inferior

rank, who have no proper notion either of ſhame or infamy, who have no eſtates or characters to loſe; ſo prejudiced and incapable in point of education, as to be able clearly to diſcern on which ſide the truth lies. Theſe things conſidered, you may ceaſe, my Prince, your ſurpriſe why that law, by means of which in England the truth is inquired into, is not in common to other countries, becauſe other parts of the world cannot furniſh juries of ſo great ſufficiency, or equally qualified.

Chap. XXX.

The Prince commends the way of proceeding by Juries.

PRINCE. Though we have already agreed in it, that "compariſons be odious," yet the Civil Law, as you have made out the compariſon, and ſet forth the reaſons, is delivered from all imputation of blame or defect: for although you have preferred the Laws of England to it, yet the defect is not in the law itſelf; neither the Civil Law nor the firſt legiſlators ſtand impeached; you have only demonſtrated that the country where it prevails is the occaſion of it; by means of which it does not ſo effectually get at the truth, in dubious caſes, as the Laws of England do; that the Law of England, in the caſe juſt now diſcuſſed by you, is better accommodated for England than the Civil Law, is out of diſpute; and we cannot have the leaſt inclination to introduce the Civil Law inſtead of it. But this ſuperior excellence of the Law of England does not happen through any blameable defect in the other law, but, as you ſay, the wealth and populouſneſs of the country are the cauſe.

Chap. XXXI.

Whether the proceeding by Jury be repugnant to the Law of God.

BUT, my good Chancellor, though the method whereby the Laws of England ſift out the truth, in matters which are at iſſue, highly pleaſes me; yet there reſts one doubt with me, whether it be not repugnant to Scripture. Our bleſſed Saviour ſays to the Phariſees (St. John viii. 17), "It is written in your law that the teſtimony of two men is true." And, in confirmation, he ſubjoins, in the very next verſe, "I am one that bear witneſs of myſelf, and the Father that ſent me beareth witneſs of me." The Phariſees were Jews; wherefore it is the ſame thing to ſay, "It is written in your law," as to ſay, "It is written in the Law of Moſes," which was no other than the Law of God, given by Moſes to the children of Iſrael; wherefore to contradict this Law of Moſes, is, in effect, the ſame as to contradict the Law of God; from whence it follows, that the Law of England

deviates from this law of God, which it does not ſeem lawful in any wife to impugn. It is written alſo (Matt. xviii. 16) that our Saviour, ſpeaking of offences, and forgiving one another, amongſt other things, delivers himſelf thus, "If thy brother will not hear thee, then take with thee one or two more, that, in the mouth of two or three witneſſes, every word may be eſtabliſhed." Now, if in the mouth of two or three witneſſes God will eſtabliſh every word; why do we look for the truth, in dubious caſes, from the evidence of more than two or three witneſſes? No one can lay better or other foundation than our Lord hath laid. This is what, in ſome meaſure, makes me heſitate concerning the proceedings according to the Laws of England, in matters of proof, wherefore I deſire your anſwer to this objection.

Chap. XXXII.

The Chancellor's Anſwer.

CHANCELLOR. The Laws of England, Sir! do not contradict theſe paſſages of Scripture for which you ſeem to be ſo concerned; though they purſue a method ſomewhat different in coming at, and diſcovering the truth: how does that law of a general council prejudice or condemn the teſtimony of two witneſſes, whereby it is provided, that the Cardinals ſhall not be convicted of any crime, unleſs upon the depoſition of twelve witneſſes? If the teſtimony of two be true, *à fortiori*, the teſtimony of twelve ought rather to be preſumed to be ſo. The rule of law ſays, "The more always contains in it that which is leſs." So, the repayment of whatſoever the hoſt ſpent more than the two-pence, towards the taking care of the man who fell amongſt thieves, was promiſed to be paid punctually to him by the good Samaritan, when he came again. Shall not an impeached perſon, who endeavours to prove himſelf to have been in another place at the time of the fact alleged and committed, be obliged to produce more than two or three witneſſes, when the proſecutor has proved, or is ready to prove, the charge by as many? So that perſon who takes upon him to convict any number of witneſſes of perjury, muſt of neceſſity produce a greater number of witneſſes againſt them; ſo that the teſtimony of only two or three witneſſes ſhall not, in all caſes, be preſumed to be true. But the meaning of the law is this, that a leſs number than two witneſſes ſhall not be admitted as ſufficient to decide the truth in doubtful caſes. And this appears from Bernard, (Extra. de Teſti. Cap. *Licet* in Gloſſa ordinaria) where he puts many caſes, in which, by the laws, more than three witneſſes are required; in ſome caſes, five, in others, ſeven. And, that the truth in ſome caſes may be proved by two witneſſes only, when there is no other way of diſcovering it, is what the laws of England likewiſe affirm. As, where facts are committed upon the high ſea, without the body of any county, which may be afterwards brought to trial before the Admiralty-Court; facts of this

kind, by the conſtitution of England, are to be proved by witneſſes, without a jury. In like manner are proceedings before the Lord Conſtable and Earl Marſhal, upon a fact committed in another kingdom, ſo as the cognizance of it belong to the juriſdiction of the Court of Chivalry. So, in the courts of certain liberties in England, where they proceed by the Law of Merchants, touching contracts between merchant and merchant, beyond the ſeas, the proof is by witneſſes only; becauſe, in ſuch like caſes, there is not of the neighbourhood a number ſufficient to make up a jury of twelve men: as in contracts and other caſes ariſing within the kingdom is uſually done. In like manner if a deed, in which witneſſes are named, be brought into the courts of law, proceſs ſhall go out againſt ſuch witneſſes, who, together with a jury, ſhall inquire upon their oaths whether it be the deed of that party whoſe it is ſuppoſed to be. Wherefore, the law of England does not call in queſtion any other law which finds out the truth of witneſſes, eſpecially when the neceſſity of the caſe ſo requires. The Laws of England obſerve a like method, not only in the caſes already put, but in ſome others which it is not material now to enlarge upon: but it never decides a cauſe only by witneſſes, when it can be decided by a jury of twelve men, the beſt and moſt effectual method for the trial of the truth; and, in which reſpect, no other laws can compare with it. This proceeding is leſs liable to the hazard of bribery, ſubornation, or other ſiniſter methods; neither can this method of proceeding in any caſe miſcarry for want of evidence: what the witneſſes give in upon oath cannot but have its due effect; neither can a jury be perjured, but that for ſuch their crime they muſt expect a very ſevere puniſhment, and the party thereby aggrieved is, and will be entitled to his remedy. Theſe things are not tranſacted at the will and pleaſure of ſtrangers, or parties wholly unknown, but upon the oaths of honeſt, conſiderable and creditable men, who value their character, who are neighbours to the parties concerned, to whom there can be no cauſe of challenge or diſtruſt as touching the verdict they ſhall give in. Oh! what deteſtable villanies often happen from the method of proceedings by witneſſes only. If a man contract matrimony in a clandeſtine manner, and afterwards before witneſſes betroth himſelf to another woman: in this caſe the Contentious Court will oblige him to conſummate with this laſt woman; and the Penitential Court will adjudge him to cohabit with the firſt, if he be duly required thereto; and he will be obliged to do penance every time he ſhall be informed againſt for cohabiting with the other woman, to whom he was ſo betrothed; nay, though in both courts one and the ſame man be the judge. May one not ſay in the caſe before us, as it is written concerning the Behemoth (Job xl. 17), that indeed it is very intricate and perplexed? The perſon contracting ſhall never afterwards cohabit with either of the women, or with any other woman, without being proſecuted for ſo doing. A miſchief of this kind cannot poſſibly happen in any caſe, according to the proceedings of the Law of England, though a Behemoth himſelf were ſolicitor in the cauſe. Are you not now convinced, moſt excellent Prince, that the more objections you raiſe againſt the Laws of England, the more amiable and reſplendent they appear?

Chap. XXXIII.

Why ſome of our Kings have taken diſguſt at the Laws of England.

PRINCE. I am convinced that the Laws of England eminently excel, beyond the laws of all other countries, in the caſe you have been now endeavouring to explain; and yet I have heard that ſome of my anceſtors, kings of England, have been ſo far from being pleaſed with thoſe laws, that they have been induſtrious to introduce, and make the Civil Laws a part of the Conſtitution, in prejudice of the Common Law; this makes me wonder what they could intend by ſuch behaviour.

Chap. XXXIV.

The Chancellor's Anſwer.

CHANCELLOR. You would ceaſe to wonder, my Prince, if you would pleaſe ſeriouſly to conſider the nature and occaſion of the attempt. I have already given you to underſtand that there is a very noted ſentence, a favourite maxim or rule in the Civil Law, that "that which pleaſes the Prince has the effect of a law." The Laws of England admit of no ſuch maxim, or anything like it. A king of England does not bear ſuch a ſway over his ſubjects, as a king merely, but in a mixed political capacity: he is obliged by his Coronation Oath to the obſervance of the laws, which ſome of our kings have not been well able to digeſt, becauſe thereby they are deprived of that free exerciſe of dominion over their ſubjects, in that full extenſive manner as thoſe kings have who preſide and govern by an abſolute regal power; who, in purſuance of the laws of their reſpective kingdoms, in particular, the Civil Law, and of the aforeſaid maxim, govern their ſubjects, change laws, enact new ones, inflict puniſhments, and impoſe taxes, at their mere will and pleaſure, and determine ſuits at law in ſuch manner, when, and as they think fit. For which reaſon, your anceſtors endeavoured to ſhake off this political frame of government, in order to exerciſe the ſame abſolute regal dominion too over their ſubjects, or rather to be at their full ſwing to act as they liſt: not conſidering that the power of both kings is really, and in effect equal, as is ſet forth in my aforeſaid treatiſe, De Natura Legis Naturæ, viz., that it is not a reſtraint, but rather a liberty to govern a people by the juſt regularity of a political government, or rather right reaſon; that it is the greateſt ſecurity both to king and people, and takes off no inconſiderable part of his royal care. That this may the better appear, you will pleaſe

to conſult the experiences you have had of both kinds of government; to begin with the regal, ſuch as the King of France exerciſes at preſent over his ſubjects; and, in the next place, you will pleaſe to conſider the effect of that regal political government which kings of England exerciſe over their ſubjects.

Chap. XXXV.

The inconveniences in France by means of the regal Government.

YOU may remember, moſt worthy Prince, in what a condition you obſerved the villages and towns of France to be, during the time you ſojourned there. Though they were well ſupplied with all the fruits of the earth, yet they were ſo much oppreſſed by the king's troops, and their horſes, that you could ſcarce be accommodated in your travels, not even in the great towns; where, as you were informed by the inhabitants, the ſoldiers, though quartered in the ſame village a month or two, yet neither did nor would pay anything for themſelves or horſes; and, what is ſtill worſe, the inhabitants of the villages and towns where they came were forced to provide for them, gratis, wines, fleſh, and whatever elſe they had occaſion for; and if they did not like what they found, the inhabitants were obliged to ſupply them with better from the neighbouring villages; upon any non-compliance the ſoldiers treated them at ſuch a barbarous rate, that they were quickly neceſſitated to gratify them. When proviſions, fuel, and horſe-meat fell ſhort in one village they marched away full ſpeed to the next, waſting it in like manner. They uſurp and claim the ſame privilege and cuſtom not to pay a penny for neceſſaries, either for themſelves or women, whom they always carry with them in great numbers, ſuch as ſhoes, ſtockings, and other wearing apparel, even to the ſmalleſt trifle of a lace, or point; all the inhabitants, wherever the ſoldiers quarter, are liable to this cruel oppreſſive treatment: it is the ſame throughout all the villages and towns in the kingdom, which are not walled. There is not any the leaſt village, but what is expoſed to the calamity, and once or twice in the year is ſure to be plundered in this vexatious manner. Further, the king of France does not permit any one to uſe ſalt, but what is bought of himſelf, at his own arbitrary price, and if any poor perſon would rather chooſe to eat his meat without ſalt, than to buy it at ſuch an exorbitant dear rate, he is notwithſtanding compellable to provide himſelf with ſalt, upon the terms aforeſaid, proportionably to what ſhall be adjudged ſufficient to ſubſiſt the number of perſons he has in family: beſides all this, the inhabitants of France give every year to their king the fourth part of all their wines, the growth of that year, every vintner gives the fourth penny of what he makes of his wines by ſale. And all the towns and boroughs pay to the king yearly great ſums of money, which are aſſeſſed upon them for the

expenſes of his men-at-arms. So that the king's troops, which are always conſiderable, are ſubſiſted and paid yearly by thoſe common people, who live in the villages, boroughs, and cities. Another grievance is, every village conſtantly finds and maintains two croſs-bowmen at the leaſt; ſome find more, well arrayed in all their accoutrements, to ſerve the king in his wars, as often as he pleaſeth to call them out, which is frequently done. Without any conſideration had of theſe things, other very heavy taxes are aſſeſſed yearly upon every village within the kingdom for the king's ſervice; neither is there ever any intermiſſion or abatement of taxes. Expoſed to theſe and other calamities, the peaſants live in great hardſhip and miſery. Their conſtant drink is water, neither do they taſte, throughout the year, any other liquor; unleſs upon ſome extraordinary times, or feſtival days. Their clothing conſiſts of frocks, or little ſhort jerkins made of canvaſs no better than common ſackcloth; they do not wear any woollens, except of the coarſeſt ſort, and that only in the garment under their frocks; nor do they wear any trowſe, but from the knees upward; their legs being expoſed and naked. The women go barefoot, except on holidays: they do not eat fleſh, unleſs it be the fat of bacon, and that in very ſmall quantities, with which they make a ſoup; of other ſorts, either boiled or roaſted, they do not ſo much as taſte, unleſs it be of the inwards and offals of ſheep and bullocks, and the like, which are killed for the uſe of the better ſort of people, and the merchants: for whom alſo quails, partridges, hares, and the like, are reſerved, upon pain of the gallies: as for their poultry, the ſoldiers conſume them, ſo that ſcarce the eggs, ſlight as they are, are indulged them by way of a dainty. And if it happen that a man is obſerved to thrive in the world, and become rich, he is preſently aſſeſſed to the king's tax, proportionably more than his poorer neighbours, whereby he is ſoon reduced to a level with the reſt. This, or I am very much miſtaken, is the preſent ſtate and condition of the peaſantry of France. The nobility and gentry are not ſo much burthened with taxes. But if any one of them be impeached for a ſtate crime, though by his known enemy, it is not uſual to convene him before the ordinary judge, but he is very often examined in the king's own apartment or ſome ſuch private place; ſometimes only by the king's purſuivants and meſſengers: as ſoon as the king, upon ſuch information, ſhall adjudge him to be guilty, he is never more heard of; but immediately, without any other formal proceſs, the perſon ſo accuſed and adjudged guilty is put into a ſack, and by night thrown into the river by the officers of the provoſt-marſhal, and there drowned: in which ſummary way you have heard of more put to death than by any legal proceſs. But ſtill, according to the Civil Law, "what pleaſes the prince has the effect of a law." Other things of a like irregular nature, or even worſe, are well known to you, during your abode in France, and the adjacent countries; acted in the moſt deteſtable barbarous manner, under no colour or pretext of law than what I have already declared. To be particular would draw out our diſcourſe into too great a length. Now it remains to conſider what effect that political mixed government, which prevails in England, has, which ſome of your progenitors

have endeavoured to abrogate, and inſtead thereof to introduce the Civil Law; that, from the conſideration of both, you may certainly determine with yourſelf which is the more eligible, ſince, as is above-mentioned, the Philoſopher ſays, "that oppoſites laid one by the other, do more certainly appear;" or, as more to our preſent argument, "happineſſes by their contraries are beſt illuſtrated."

Chap. XXXVI.

The advantages in England, where the Government is of a mixed nature.

In England no one takes up his abode in another man's houſe, without leave of the owner firſt had, unleſs it be in public inns; and there he is obliged to diſcharge his reckoning, and make full ſatisfaction, for what accommodations he has had, ere he be permitted to depart. Neither is it lawful to take away another man's goods without the conſent of the proprietor, or being liable to be called to an account for it. No man is concluded, but that he may provide himſelf with ſalt, and other neceſſaries for his family, when, how, and where he pleaſes. Indeed, the king, by his purveyors, may take for his own uſe neceſſaries for his houſehold, at a reaſonable price, to be aſſeſſed at the diſcretion of the conſtables of the place, whether the owners will or not: but the king is obliged by the laws to make preſent payment, or at a day to be fixed by the great officers of the king's houſehold. The king cannot deſpoil the ſubject, without making ample ſatisfaction for the ſame. He cannot, by himſelf or his miniſtry, lay taxes, ſubſidies, or any impoſition, of what kind ſoever, upon the ſubject; he cannot alter the laws, or make new ones, without the expreſs conſent of the whole kingdom in Parliament aſſembled: every inhabitant is at his liberty fully to uſe and enjoy whatever his farm produceth, the fruits of the earth, the increaſe of his flock, and the like: all the improvements he makes, whether by his own proper induſtry, or of thoſe he retains in his ſervice, are his own to uſe and enjoy, without the let, interruption, or denial of any: if he be in any wiſe injured, or oppreſſed, he ſhall have his amends and ſatisfaction againſt the party offending: hence it is, that the inhabitants are rich in gold, ſilver, and in all the neceſſaries and conveniences of life. They drink no water, unleſs at certain times, upon a religious ſcore, and by way of doing penance. They are fed, in great abundance, with all ſorts of fleſh and fiſh, of which they have plenty everywhere; they are clothed throughout in good woollens; their bedding and other furniture in their houſes are of wool, and that in great ſtore; they are alſo well provided with all other ſorts of houſehold goods and neceſſary implements for huſbandry: everyone, according to his rank, hath all things which conduce to make life eaſy and happy. They are not ſued at law but before the ordinary judge, where they are treated with mercy and juſtice, according to the laws of the land; neither are they impleaded in point of

property, or arraigned for any capital crime, how heinous ſoever, but before the king's judges, and according to the laws of the land. Theſe are the advantages conſequent from that political mixed government which obtains in England: from hence it is plain, what the effects of that law are in practice, which ſome of your anceſtors, kings of England, have endeavoured to abrogate: the effects of that other law are no leſs apparent, which they ſo zealouſly endeavoured to introduce among us; ſo that you may eaſily diſtinguiſh them by their comparative advantages; what, then, could induce thoſe kings to endeavour ſuch an alteration, but only ambition, luxury, and impotent paſſion, which they preferred to the good of the ſtate? You will pleaſe to conſider, in the next place, my good Prince, ſome other matters which will follow to be treated of.

Chap. XXXVII.

Concerning the Regal and the Political Government.

SAINT THOMAS, in the book which he addreſſes to the King of Cyprus (De Regimine Principum), ſays, "That a king is given for the ſake of the kingdom, and not a kingdom for the ſake of the king." Conſequently, all kingly power ought to be applied for, and to centre in the good of the kingdom or ſtate; which, in effect, conſiſts in the defence of the ſubject from the incurſions of other nations, and in the protection of their lives and properties from injuries and violence as to one another. A king who cannot come up to this character is to be looked upon as weak; but, if through his own paſſions, poverty, or want of economy, he be in ſo diſtreſſed a condition that he cannot keep his hands off from ſeizing on his ſubject's property, by means whereof he ſo impoveriſhes them, that their eſtates are not ſufficient to maintain both, in how much a more impotent deſpicable condition may we juſtly reckon ſuch a prince to be, than if he were barely unable to defend them againſt the injuries of others? Such a prince, indeed, is not only to be called weak, but weakneſs itſelf; and is far from being a proper head of a free people, whilſt he labours under ſuch preſſures and obligations. On the other hand, he may well be eſteemed a free and powerful prince, who can protect his ſubjects againſt a foreign force as againſt one another: their properties are ſafe with reſpect to their neighbours and fellow-citizens, not liable to the oppreſſion or depredation of any one, not even though the prince himſelf ſhould have paſſions and occaſions of his own to gratify; for who can be more powerful or free than that prince who cannot only bring others within due bounds, but can alſo get the better of his own paſſions? which that prince can, and always does, who governs his people in the political way. So that experience ſufficiently ſhows you, my Prince, that thoſe anceſtors of yours, who were ſo much ſet upon aboliſhing the

political form of government, had they been able to have compaſſed it, would not only have been diſappointed of their aim and wiſh of enlarging their power thereby, but would, by this means, have expoſed both themſelves and the whole kingdom to far greater miſchief and more imminent danger. Nevertheleſs, what we have ſhown from the experience of the ill effects of a deſpotic government, which may ſeem to check and leſſen the power of an abſolute prince, do in reality rather proceed from a want of due care, and from miſbehaviour, than from any defect in that law by which he governs. And therefore the regal power or dignity itſelf is not hereby leſſened: ſince the power, whether of an abſolute prince, or of one limited by laws, as I have evidently ſhown in the aforeſaid treatiſe of the Law of Nature, is equal. But that the power of an abſolute prince is attended with much more difficulty in the exerciſe of it, and with leſs ſecurity both to king and people, the foregoing obſervations do, I think, ſufficiently demonſtrate. So that a wiſe prince would not wiſh to change the political form of government for an abſolute. And for the ſame reaſon it is that St. Thomas is ſuppoſed to wiſh that all the kingdoms and nations of the world were governed in the political way.

Chap. XXXVIII.

The Prince deſires the Chancellor to proceed.

PRINCE. You will, I hope, excuſe it, my Chancellor, that while I have been propoſing my doubts and queries, I have obliged you to digreſs ſo far from the main point. What you have explained by the way has been very inſtructive, though it may have a little taken you off from your principal deſign. I now earneſtly deſire you forthwith to proceed; and, as you at firſt ſet out, and promiſed me that you would pleaſe to declare ſome other caſes, in the deciſion whereof the Laws of England and the Civil Law of Nations obſerve a different method of procedure.

Chap. XXXIX.

Of the legitimation of children born before matrimony.

CHANCELLOR. Sir! In obedience to your requeſt, I will endeavour to lay before you ſome other caſes, in which the laws aforeſaid obſerve a different determination: which is preferable, I will not take upon me to ſay, but ſhall leave it to your own judgment. The Civil Law legitimates children born before matri-

mony, as well as after, and qualifies them to ſucceed in the inheritance of the parents The Law of England does not admit children born before matrimony to take by heirſhip. It calls ſuch an offspring natural, but not legitimate. In the caſe before us the Civilians extol their law, becauſe they ſay that it is an encouragement to marriage, by which the ſin is done away, and ſo the ſouls of both parties are preſerved from damnation. They allege, further, that the preſumption is, that ſuch was the intention of the parties, as it were, by way of contract, at the time of committing the act; the ſubſequent marriage demonſtrates as much. Moreover, the Church admits and allows them for legitimate. Theſe, I think, are the chief arguments by which they juſtify and defend the Civil Law. To this the learned in our law reply, that the ſin of concubinage, in the caſe propoſed, is not purged by the ſubſequent marriage, though in ſome meaſure the puniſhment of the parties offending may be mitigated. They urge further, that the guilty in this caſe are the leſs penitent for their offence, in proportion as they find the laws more favourable to it; upon which conſideration they likewiſe become more apt to repeated acts of this kind, and ſo act in contradiction both to the commands of God and the ordinances of the Church. So that this law not only ſhares in the guilt of the offender by abetting ſuch a practice, but is quite beſide the nature and definition of a good law, which, as has been already obſerved, "is a holy ſanction commanding things which are honeſt, and forbidding the contrary." Now the Civil Law, in the caſe before us, rather prompts on the party to do things which are diſhoneſt. Nor is it a ſufficient defence of this law, to ſay that the Church admits ſuch iſſue as legitimate. Since our holy mother the Church diſpenſes with many things which ſhe does not allow of to be done; ſo the Apoſtle diſſolved the reſtraint upon virgins, by way of diſpenſation, when at the ſame time he adviſed the contrary, and would rather that all men were even as himſelf. And far be it that ſo good a mother ſhould deny her compaſſion to her ſons, whoſe caſe is ſo much the more deplorable, becauſe they often fall into this ſin, being betrayed by that encouragement which the Civil Law allows it: and the ſubſequent marriage is a good argument to the Church of their being truly penitent for what is paſt, and of their reſolution to contain for the future. The Law of England has a quite contrary effect; it does not give any encouragement to ſuch a criminal action; neither does it ſcreen the offenders, but lays a reſtraint upon them, threatens and inflicts a puniſhment, that they may not offend. The inclination is predominant enough in itſelf, without any other incitements; it rather wants a curb. The propenſions to luſt are very importunate and conſtant; and mankind, ſeeing they cannot be continued of and by themſelves, naturally deſire to be perpetuated in their ſpecies, which, without that, muſt be ſoon extinguiſhed. Every living creature has an inclination to be aſſimilated to the firſt cauſe, which is of a perpetual eternal duration: the ſenſation of contact, by which generation is effected, is a greater gratification than the ſenſe of taſte, which only preſerves the individual. Wherefore Noah, by way of puniſhment to his ſon, who had diſcovered his father's nakedneſs, curſed Canaan his

grandſon, and thereby aggravated his ſon Ham's puniſhment more than if he himſelf had been accurſed. Wherefore that law which puniſhes ſuch an offſpring, affects the ſin with a ſeverer penalty than that which immediately affects the offender in his own perſon. Now I muſt leave it to you to judge, how truly and zealouſly the Law of England proſecutes a criminal amour. It is not content only to condemn the offſpring to be illegitimate, but debars it from ſucceeding to the patrimony of the parents. Is not this a chaſte law, a law of order, does it not more effectually diſcourage this ſin than the Civil Law, which remits the ſin of fornication without exacting any puniſhment at all?

Chap. XL.

Why baſe-born children are not in England by the ſubſequent marriage legitimated.

BESIDES, the Civil Law ſays that a natural ſon is the ſon of the people; concerning which a certain poet,

Cui pater eſt populus, pater eſt ſibi nullus et omnis,
Cui pater eſt populus, non habet ipſe patrem.

"He who has the people for his father ſeems to have no father at all, or rather every one: he who has the people for his father has in reality no proper father." Since ſuch an offſpring, when born, had no father, how by any ſubſequent act he can have one is not known in nature. A woman has by two ſeveral men two ſons; one of the ſaid men intermarries with her; which of the two ſons is legitimated by ſuch marriage? Opinion may prevail, but reaſon cannot decide; there was a time when both of them paſſed in eſtimation for children of the people or community, when neither knew nor had any other father: wherefore it would ſeem inconſiſtent and unreaſonable that a ſon born afterwards of the ſame mother in lawful wedlock, whoſe original is confeſſedly known, ſhould be debarred of his inheritance, and that either of the other two ſons born out of marriage ſhould take as heir; eſpecially in England, where the eldeſt ſon, lawfully begotten, inherits to the lands: any indifferent perſon would judge it no leſs unreaſonable if a baſe-born child ſhould have an equal ſhare in the inheritance with one who is lawfully begotten. And by the Civil Law the inheritance is divided amongſt the male iſſue. St. Auguſtine, in his book (De Civitate Dei), has it that Abraham "gave all that he had unto Iſaac, but unto the ſons of the concubines which Abraham had Abraham gave gifts." His obſervation is, that thereby it ſeems to be intimated that the inheritance of right does not belong to a ſpurious iſſue, but only a competent living. Thus St. Auguſtine; and under the term ſpurious he includes all ſuch children as are illegitimate, or born out of wedlock; as the Holy Scriptures do likewiſe, which never give to any ſuch the appellation of baſtard. You ſee St. Auguſtine, nay, and Abraham too, makes no ſmall difference as to the

ſucceſſion of a ſpurious or legitimate offspring. Further, another Scripture ſets a mark of infamy upon all illegitimate children in the following metaphorical expreſſion :—"The multiplying brood of the ungodly ſhall not thrive nor take deep rooting from baſtard ſlips, nor lay any faſt foundation" (Wiſd. iv. 3). The Church alſo does the ſame by not admitting them into Holy Orders; or, if it diſpenſes with them thus far, yet they are never permitted to enjoy any dignity or pre-eminence in the Church. It is but fit and reaſonable, therefore, that human laws ſhould deprive ſuch perſons of the privilege of ſucceſſion: the Scriptures alſo, in point of birth, judge ſuch inferior to thoſe who are begotten in lawful marriage. Gideon, that mighty man of valour, is ſaid to have had threeſcore and ten ſons of his body begotten, for he had many wives, and but one ſon by his concubine; and yet this one ſon ſlew all his brethren, except Jotham, the youngeſt, who hid himſelf. More wickedneſs is found to have been in that one baſtard-ſlip than in threeſcore and nine lawfully begotten. It is an old ſaying, If a baſtard be good, it is moſtly by accident, or ſpecial grace; if wicked, it is but his nature. An unlawful brood is thought to derive a corruption and ſtain from the tranſgreſſion of the parent, without any concurrent fault of his own. So all of us have contracted a very great corruption from the ſin of our firſt parents, though not of ſo opprobrious a nature: the blemiſh with which baſtards are affected is widely different from that of legitimate children. The mutual culpable luſt of the parents affects their offspring, which does not give itſelf ſuch a looſe in the lawful chaſte embraces of the matrimonial life. The ſin of fornicators is mutual and in common; and as it bears a near reſemblance, therefore, with the firſt ſin, it leaves a worſe impreſſion on the iſſue than that of any other ſin which men commit in private without any accomplice. So that a child ſo born may rather be called the offspring of ſin itſelf than of the guilty perſons. Wherefore the wiſdom of Solomon, diſtinguiſhing between a ſpurious and a legitimate offspring, of the latter ſays, "How beautiful is the offspring of the chaſte and nuptial bed! The memory of it is immortal, being acknowledged both by God and man." Whereas the other is not ſo much as acknowledged amongſt men; for which reaſon they are called the children of the people or community: and of theſe the ſame Book of Wiſdom ſays, "Children begotten of unlawful beds are witneſſes of wickedneſs againſt their parents in their trial." For, being aſked about their parents, they reveal their imperfections, as the wicked ſon of Noah did his father's nakedneſs. It is therefore thought that the man who was born blind, concerning whom the Phariſee ſaid, "Thou waſt altogether born in ſin," that he was a baſtard, and ſo, in that ſenſe, born in ſin: and when they add immediately, "and doſt thou teach us?" they ſeem to intimate as if a baſtard were not qualified by nature, like the iſſue of a lawful bed, either for knowledge or for teaching others. Therefore that law does not rightly determine which equals baſtards with children lawfully begotten in the ſucceſſion to the inheritance of their parents, when the Church judges them not duly qualified for orders, or fit to preſide in God's inheritance. The Scriptures likewiſe put a wide diſtinction between them, as we have above obſerved; and

nature itſelf makes a difference in her gifts by ſetting, as it were, a natural mark or blemiſh on the natural children, though ſecretly impreſſed upon the mind. Which now of thoſe two laws, in the caſe before you, do you hold with and give the preference to?

Chap. XLI.

The Prince's approbation.

Prince. Indeed I give the preference to that law which does moſt effectually caſt out ſin and eſtabliſh virtue. I am alſo of opinion that ſuch are leaſt entitled to the benefit of human laws, whom the law of God judges unworthy, and whom the Church excludes from her orders and dignities, as being by nature more prone to wickedneſs.

Chancellor. I think you judge in the caſe very rightly. I will now recollect ſome other caſes wherein the Civil and our Laws diſagree.

Chap. XLII.

On the rule of the Civil Law, "Partus ſequitur ventrem."

The Civil Laws decree that the iſſue always follows the venter, that is, the condition of the mother: for example, if a bond-woman be married to a free-man, the children ſhall be bond. Again, if a bond-man marrieth a free-woman, the children ſhall be free: by the laws of England "the iſſue does not follow the condition of the mother, but always that of the father;" ſo that a free-man begetteth free children, whether he be married to a bond or free woman. So a bond-man, who is married, can beget none but bond-children. Which law, think you, is more equal in its deciſion? Is not that a cruel law which, without any fault of the party, adjudges the iſſue of the free man to be bond? neither is that law deemed by ſome leſs cruel, which adjudges the iſſue of a free woman to be bond: the civilians ſay that their laws give the beſt determination in the caſe; for they ſay, "A good tree cannot bring forth bad fruit, neither can a corrupt tree bring forth good fruit." And it has the conſent of all laws that every plant belongs to the ſoil where it is planted: the child alſo has a more certain knowledge of the mother who bore him than of the father who begot him. To this the ſages in our laws reply that a child lawfully begotten hath no more certain knowledge of the one parent than of the other; for both laws,

however wide in other reſpects, agree in this, that he is the father whom the marriage declares ſo to be. Is it not more reaſonable that the iſſue ſhould follow the condition of the father than that of the mother, ſince Adam, ſpeaking of ſuch as are joined in wedlock, ſays, "And they two ſhall be one fleſh;" which our Saviour, in the Goſpel, thus explains:—"They are no more twain, but one fleſh." And foraſmuch as the male comprehends the female, the whole fleſh, ſo made one, ought rather to regard and to be referred to the male, as the more worthy. "Male and female created he them, and called their name Adam." The Civil Laws themſelves allow that the woman always ſhines by reflection from her huſband, whence (C. De Incolis, Lib. x. Ti. ſi.) the text has it, "We advance women by giving them the titles and honours of their huſbands: we honour them with the ſirnames of our families. We proceed and decree for and againſt them in the courts of law in the name of the huſband. We change their habitations; but in caſe they afterwards marry a man of inferior rank, they are deprived of their former honours, and follow the condition, as well as habitation of the latter huſband." And ſince all the children, eſpecially the ſons, bear the name of the father, and not of the mother, whence can it be that the ſon, in reſpect of his mother, ſhould loſe his rank and follow her condition, when, at the ſame time, he is known in law by the name of his father, who begot him: nay, the woman is diſtinguiſhed according to the rank and quality of her huſband, neither of which can ſuffer diminution, or be ſullied by any crime or baſe condition of the wife. That law ought to be accounted cruel and unjuſt which, without any the leaſt pretence or reaſon, leaves the ſon in a baſe condition. Again, as to the inheritance which the father, a free man, lying under no imputation, crime, or diſability in law, whereby forfeitures accrue, has, with great care and induſtry, acquired for himſelf and family, that in the caſe before us the inheritance ſhould paſs into the poſſeſſion of a ſtranger who took no pains in the acquiſition thereof, ſeems very unjuſt. Further, the baſe condition of the child affects the father's name with the ſame blemiſh. Again, that muſt needs be judged to be a hard and unjuſt law which tends to increaſe the ſervitude and to leſſen the liberty of mankind. For "human nature is evermore an advocate for liberty." God Almighty has declared himſelf the God of Liberty: this being the gift of God to man in his creation, the other is introduced into the world by means of his own ſin and folly; whence it is that everything in nature is ſo deſirous of liberty, as being a ſort of reſtitution to its primitive ſtate. So that to go about to leſſen this is eſteemed both wicked and cruel: it is upon ſuch conſiderations as theſe that the Laws of England, in all caſes, declare in favour of liberty. True it is, where the father is a bond-man, though married to a free woman, the child is, by our laws, in the ſame ſtate of bondage with the father; nor is this unreaſonable or unjuſt, for a woman who has undervalued herſelf by marrying a bond-man is thereby made one fleſh with him. In conſequence of the laws above recited, ſhe follows the condition of her huſband, and by her own voluntary act hath put herſelf under ſubjection to him, having been before under no conſtraint of the law ſo to do. Thoſe who by act of law enter them-

ſelves bond-men in the King's Courts, or ſell themſelves into bondage without any compulſion, are in the ſame caſe. How, then, can the laws make that ſon free, whom the mother, in the preſent inſtance, has ſo brought forth in her ſtate of ſubjection; for no huſband can ever be ſo much in ſubjection to his wife, let her be of never ſo high a rank or quality, as this woman hath made herſelf ſubject to her huſband, whom, though a bond-man, ſhe hath advanced to be her lord, according to the ſentence of God himſelf, pronounced in Holy Scripture, "That every wife ſhall be in ſubjection to her huſband, and he ſhall rule over her." What the Civilians ſay concerning the fruit of a good or corrupt tree is more to our purpoſe than to theirs, ſince every wife is either bond or free, according to the condition of her huſband. And in whoſe ſoil, pray, does the huſband plant, if not his own, when the wife is made one fleſh with him? What if he hath grafted a ſlip of good kind upon a crab-ſtock, ſince the tree is his property, is not the fruit ſtill his fruit, though it favour of the ſtock? So the children begotten of a woman are the huſband's, whether the mother be bond or free. Nevertheleſs, by the laws of England, the lord of a bond-woman who is married to a free man, without his conſent firſt had and obtained, I ſay, in this caſe, though the lord cannot get her divorced *à vinculo matrimonii*, it being expreſsly ſaid in the Goſpel, "Whom God hath joined together let no man put aſunder;" yet he ſhall recover againſt the free man all his damages which he hath ſuſtained by reaſon of the loſs of his bond-woman, and of the ſervice which ſhe owed him. This, I conceive, is the ſum, ſubſtance, and manner of proceeding according to the laws of England in the caſe now declared. And now, my Prince, what is your opinion of the matter, and which of the two laws do you judge to be the moſt eligible?

Chap. XLIII.

The Prince yields his aſſent.

Prince. There is no pretence in reaſon to doubt but that in this caſe the Laws of England excel the Roman Imperial Laws; and, for my own part, I always think that law moſt eligible which ſhows more favour than ſeverity to the parties concerned in it, and who are to be judged by it. For I remember an excellent rule which ſays, "that matters of hardſhip are odious, and ought as much as poſſible to be reſtrained, but favours are to be amplified, and extended to their full extent."

Chancellor. With good reaſon. I will propound one caſe more, wherein the two laws differ, and then conclude, leſt I prove tedious, whilſt I expatiate upon the variety of more caſes, and the difference each law obſerves in its deciſion, and ſo my diſcourſe would be drawn out into ſuch a length as, inſtead of entertaining, to diſguſt you.

Chap. XLIV.

Concerning the Tuition of Orphans.

THE Civil Laws commit the guardianſhip of orphans to the next in blood, whether the relation be by the father's or mother's ſide, that is, to every one as he ſtands next in degree and order, to take by inheritance in caſe the orphan die. The reaſon of this law is, "no one is preſumed to take more care of, or to have a greater regard for the orphan, than he who is next in blood." The Laws of England determine quite contrary in the caſe. If an inheritance which is held in ſocage deſcend to an orphan from any relation by the father's ſide, ſuch orphan ſhall not be in guardianſhip to any of his father's relations; but he ſhall be taken care of by the relations of his mother's ſide. Again, if an inheritance deſcend to him from any relation by the mother's ſide, the orphan and ſuch his eſtate ſhall be under the care and direction of the next akin by the father's ſide, and not otherwiſe, until he come of age. The law ſays, "to commit the care of a minor to him who is the next heir-at-law is the ſame as delivering up a lamb to the care of a wolf, that is, to be made a prey of." But if the inheritance be held by knight's-ſervice, and not in ſocage, then, by the laws of the land, the minor and his eſtate ſhall not be under the management of his relations of either ſide: but both ſhall be under the care and direction of the lord of the fee, until he arrive to his complete age of one-and-twenty. Who can be ſuppoſed better qualified to inſtruct him in deeds of arms, which, in virtue of his tenure, he is obliged to perform for the lord of the fee, than the lord himſelf, to whom ſuch ſervice is due from his minor, and who is ſuppoſed to have a ſuperior intereſt to advance his ward in the world, in this and other parts of education, than any of his own relations or friends? The lord, in order to have the better ſervice from his tenant, will uſe his utmoſt care, and may well be thought better qualified to inſtruct him in this way than his own relations, who, probably, in this reſpect are preſumed, for the moſt part, wholly ignorant and unpractiſed; eſpecially if his eſtate be but a ſmall one. What is or can be of greater uſe to a minor, who, in conſequence of his tenure, is obliged to venture his life and fortune, if required, in the ſervice of the lord, than to be trained up in military diſcipline whilſt he is yet a minor? When he comes of full age, he cannot decline the nature of his tenure, but is obliged to do ſuit and ſervice to his lord of whom he holds. Indeed, it will be of no ſmall advantage to the kingdom that the inhabitants be expert in arms, for the Philoſopher ſays, "Every one behaves boldly in that way in which he knows himſelf to excel." Is not this law, then, in your judgment, my Prince, to be preferred to the other already deſcribed?

Chap. XLV.

The Education of the young Nobility during their minority.

PRINCE. It is ſo; for in the firſt inſtance, as you obſerve, it provides with greater care and caution for the preſervation of an orphan than the Civil Law does: but I am much more pleaſed with the other part of it; becauſe, by this means, our young nobility and gentry cannot ſo eaſily degenerate, but will rather, in all likelihood, go beyond their anceſtors in probity and courage, and in everything that is virtuous and praiſeworthy, being brought up in a ſuperior and more honourable family than that of their parents; nay, though their fathers may have had the good fortune to be educated in the like manner before, yet the father's houſe, even with this advantage, cannot be compared to that of the ſuperior lord; to whom both, in their turns, have been in ward. Princes of the realm, being under the ſame regulation, like as other lords, who hold immediately from the king, cannot ſo ſoon run into debaucheries, or a downright ignorance: becauſe, during the time of their minority, they are brought up at the court. Upon which account I cannot but highly commend the magnificence and ſtate of the king's palace, and I look on it as an academy for the young nobility of the kingdom to inure and employ themſelves in robuſt and manly exerciſes, probity, and a generous humanity. All which greatly tend to the reputation and proſperity of the kingdom, both at home and abroad; and make a great part of its ſecurity againſt invaders, and render it formidable both to its allies and enemies. This advantage could not accrue to the ſtate if the young nobility and gentry were to be brought up under the care and inſpection of their own friends and relations, who are but perſons of the ſame rank and quality with themſelves. As to the ſons of the burghers, and other freeholders in ſocage tenure, it cannot be prejudicial to the public good, if they be brought up among themſelves with perſons of their own degree, and though they be not bound to perform any military ſervices; as, to any one who conſiders aright, may very plainly appear.

Chap. XLVI.

Concerning open Theft and private Theft.

CHANCELLOR. There are ſome other caſes in which the Civil Law and the Common Law of England differ. For inſtance: the Civil Laws, in caſe of a manifeſt theft, where a perſon is taken in the fact, adjudge the criminal to reſtore fourfold; and for a theft which is not ſo manifeſt, where the proof is not ſo plain, the judgment

is twice the value of the thing ſtolen. But the laws of England, in either caſe, puniſh the party with death, provided the thing ſtolen exceed the value of twelve pence. So in the caſe of perſons who have been bond-men, and are ſet free, if afterwards they miſbehave, and prove ungrateful, the Civil Laws adjudge them into ſlavery again. But, by the laws of England, he who is once made free is always ſo, let his behaviour afterwards be what it will. Other caſes there are not a few, of this and the like kind, which, for brevity's ſake, I paſs over. In the two caſes now propounded, I forbear to expatiate, or inſiſt upon the ſuperior excellence of the laws of England: the properties of each law do not require ſuch a nice examination: beſides, I doubt not, your own good natural genius ſufficiently diſtinguiſhes between them.

Chap. XLVII.

The Prince inquires why the Laws of England are not taught in our Univerſities.

PRINCE. I think indeed that it requires no great labour or ſtudy to determine theſe two points. For though in England felons of all ſorts are everywhere puniſhed with death, yet they ſtill go on in defiance of all laws to the contrary: and how much leſs would they abſtain, if only a gentler puniſhment were threatened and inflicted? As for thoſe who have obtained their freedom, it would be hard if they ſhould always live under the laſh, as it were, and in fear of being again reduced to a ſtate of ſlavery, eſpecially upon the pretence or colour of ingratitude, ſince pretences of this kind could never be wanting, the ſeveral inſtances and ſpecies of ingratitude being innumerable. "Human nature, in caſe of liberty, demands greater favours than is uſual in other caſes." But, my good Chancellor, not to enter into the diſquiſition of any more caſes of this ſort, I beg you to inform me why the laws of England, which are ſo uſeful, ſo beneficial and deſirable, are not taught in our univerſities, as well as the Civil and Canon Laws, and why the degrees of Bachelor and Doctor are not conferred upon the common lawyers, as is uſually beſtowed on thoſe who are educated in other parts of learning.

Chap. XLVIII.

The Chancellor's Anſwer.

CHANCELLOR. In the Univerſities of England the ſciences are taught only in the Latin tongue, whereas the laws of England are writ in, and made up of, three ſeveral languages, Engliſh, French, and Latin. Engliſh, as the Common Law, has moſtly prevailed, and been uſed among them, a great part of it being derived down

from the old inhabitants, the Angles. French, becauſe the Normans, upon the coming in of William, called the Conqueror, and getting poſſeſſion of the kingdom, would not permit our lawyers to plead but in that language which they themſelves knew, and which the advocates of France uſe in their pleadings, and in their Parliaments. In like manner the Norman-French, after their coming into England, would not paſs any accounts of their revenues, ſave in their own native language, leſt they ſhould be impoſed upon: even in their exerciſes and diverſions, as hunting, dice, tennis, &c., they obſerved the ſame method; whence it has happened that the Engliſh, from ſuch their frequent intercourſe with the French, have given in to the ſame cuſtom, and to this very day, in their diverſions and their accounts they ſpeak French. In the courts of juſtice they formerly uſed to plead in French, till in purſuance of a law to that purpoſe that cuſtom was ſomewhat reſtrained, but not hitherto quite diſuſed; firſt, by reaſon of certain law terms, which the pleaders expreſs more aptly in French than in Engliſh: in the next place, becauſe declarations upon original writs cannot be formed ſo properly and agreeably to the nature of thoſe writs as in French, in which language the forms of ſuch declarations are learned and practiſed. Again, all pleadings, arguments, and reſolutions which paſs in the king's courts are digeſted into books for the information of the young ſtudents, and are reported in the French tongue. Many Acts of Parliament are penned in French, from whence it comes to paſs that the modern French is not the ſame with that uſed by our lawyers in the Courts of Law, but is much altered and depraved by common uſe; which does not happen to the law-French uſed in England, becauſe it is oftener writ than ſpoken: as to the Latin, all original and judicial writs, all records in the king's Courts of Juſtice, and ſome Acts of Parliament are penned in that language. Wherefore the laws of England being learned and practiſed in thoſe three ſeveral languages, they cannot be ſo well ſtudied in our univerſities, where the Latin is moſtly in uſe, but they are ſtudied in a public manner and place, much more commodious and proper for the purpoſe than in any univerſity. It is ſituated near the king's palace at Weſtminſter, where the Courts of Law are held, and in which the law proceedings are pleaded and argued, and the reſolutions of the Court, upon caſes which ariſe, are given by the judges, men of gravity and years, well read and practiſed in the laws, and honoured with a degree peculiar to them. Here, in term time, the ſtudents of the law attend in great numbers, as it were at public ſchools, and are inſtructed in all ſorts of law-learning, and in the practice of the Courts: the ſituation of the place where they reſide and ſtudy is between Weſtminſter and the City of London, which, as to all neceſſaries and conven ences of life, is the beſt ſupplied of any city or town in the kingdom: the place of ſtudy is not in the heart of the city itſelf, where the great confluence and multitude of the inhabitants might diſturb them in their ſtudies, but in a private place, ſeparate and diſtinct by itſelf, in the ſuburbs, near to the Courts of Juſtice aforeſaid, that the ſtudents, at their leiſure, may daily and duly attend with the greateſt eaſe and convenience.

Chap. XLIX.

The diſpoſition of the general ſtudy of the Laws of England.

BUT, my Prince, that the method and form of the ſtudy of the law may the better appear, I will proceed and deſcribe it to you in the beſt manner I can. There belong to it ten leſſer inns, and ſometimes more, which are called the Inns of Chancery: in each of which there are an hundred ſtudents at the leaſt; and in ſome of them a far greater number, though not conſtantly reſiding. The ſtudents are, for the moſt part, young men; here they ſtudy the nature of original and judicial writs, which are the very firſt principles of the law: after they have made ſome progreſs here, and are more advanced in years, they are admitted into the Inns of Court, properly ſo called; of theſe there are four in number. In that which is the leaſt frequented there are about two hundred ſtudents. In theſe greater inns a ſtudent cannot well be maintained under eight and twenty pounds a year; and, if he have a ſervant to wait on him, as for the moſt part they have, the expenſe is proportionately more: for this reaſon, the ſtudents are ſons to perſons of quality; thoſe of an inferior rank not being able to bear the expenſes of maintaining and educating their children in this way. As to the merchants, they ſeldom care to leſſen their ſtock in trade by being at ſuch large yearly expenſes. So that there is ſcarce to be found, throughout the kingdom, an eminent lawyer, who is not a gentleman by birth and fortune; conſequently they have a greater regard for their character and honour than thoſe who are bred in another way. There is both in the Inns of Court, and the Inns of Chancery, a ſort of an academy, or gymnaſium, fit for perſons of their ſtation; where they learn ſinging, and all kinds of muſic, dancing and ſuch other accompliſhments and diverſions, which are called revels, as are ſuitable to their quality, and ſuch as are uſually practiſed at court. At other times, out of term, the greater part apply themſelves to the ſtudy of the law. Upon feſtival days, and after the offices of the church are over, they employ themſelves in the ſtudy of ſacred and profane hiſtory: here everything which is good and virtuous is to be learned: all vice is diſcouraged and baniſhed. So that knights, barons, and the greateſt nobility of the kingdom, often place their children in thoſe Inns of Court; not ſo much to make the laws their ſtudy, much leſs to live by the profeſſion, having large patrimonies of their own, but to form their manners and to preſerve them from the contagion of vice. The diſcipline is ſo excellent, that there is ſcarce ever known to be any piques or differences, any bickerings or diſturbances amongſt them. The only way they have of puniſhing delinquents is by expelling them the ſociety: which puniſhment they dread more than criminals do impriſonment and irons: for he who is expelled out of one ſociety is never taken in by any of the other. Whence it happens,

that there is a conſtant harmony amongſt them, the greateſt friendſhip and a general freedom of converſation. I need not be particular in deſcribing the manner and method how the laws are ſtudied in thoſe places, ſince your highneſs is never like to be a ſtudent there. But, I may ſay in the general, that it is pleaſant, excellently well adapted for proficiency, and every way worthy of your eſteem and encouragement. One thing more I will beg leave to obſerve, viz., that neither at Orleans, where both the Canon and Civil Laws are profeſſed and ſtudied, and whither ſtudents reſort from all parts; neither at Angiers, Caen, nor any other Univerſity in France, Paris excepted, are there ſo many ſtudents, who have paſt their minority, as in our Inns of Court, where the natives only are admitted.

Chap. L.

Of the State, Degree, and Creation of a Serjeant-at-Law.

BUT, my Prince, ſince you are ſo deſirous to know, wherefore, in the Laws of England, the degrees of Bachelor and Doctor are not conferred, as in the profeſſions of the Canon and Civil Law in our Univerſities; I would give you to underſtand, that though in our Inns of Court there be no degrees which bear thoſe titles; yet there is in them conferred a degree, or rather an honorary eſtate, no leſs celebrated and ſolemn than that of Doctor, which is called the degree of a Serjeant-at-Law: it is conferred in the following manner.

The Lord Chief Juſtice of the Common Pleas, by and with the advice and conſent of all the judges, is wont to pitch upon, as often as he ſees fitting, ſeven or eight of the diſcreeter perſons, ſuch as have made the greateſt proficiency in the general ſtudy of the laws, and whom they judge beſt qualified. The manner is, to deliver in their names in writing to the Lord High Chancellor of England; who, in virtue of the King's writ, ſhall forthwith command every one of the perſons ſo pitched upon, that he be before the king, at a day certain, to take upon him the ſtate and degree of a Serjeant-at-Law, under a great penalty, in every one of the ſaid writs ſpecified and limited.

At which day, the parties ſummoned and appearing, each of them ſhall be ſworn upon the holy Goſpels, that he will be ready, at a further day and place to be appointed, to take upon him the ſtate and degree of a Serjeant-at-Law, and that he ſhall, at the ſame time, give gold, as, according to the cuſtom of the realm, has in ſuch caſes been uſed and accuſtomed to be done. How each is to behave and demean himſelf, the particulars of the ceremony, and manner how theſe eſtates and degrees are to be conferred and received, I forbear to inſert; it will take up a larger deſcription than conſiſts with ſuch a ſuccinct diſcourſe: beſides, at other times, I have talked it over to you in our common converſation. But I deſire that

you ſhould know, that at the time and place appointed, thoſe who are ſo choſen, hold a ſumptuous feaſt, like that at a coronation, which is to continue for ſeven days together: neither ſhall any one of the new created Serjeants be at a leſs expenſe, ſuitable to the ſolemnity of his creation, than one thouſand ſix hundred ſcutes, and upwards, whereby the expenſes in the whole, which the eight will be at, will exceed twelve thouſand eight hundred ſcutes.—To make up which, one article is, every one ſhall make preſents of gold rings to the value, in the whole, of forty pounds, at the leaſt, Engliſh money. I very well remember, when I took upon me the ſtate and degree of a Serjeant-at-Law, that my bill for gold rings came to fifty pounds, that is three hundred ſcutes. Each Serjeant, at the time of his creation, gives to every Prince of the blood, to every Duke, and to each Archbiſhop, who ſhall be preſent at the ſolemnity, to the Lord High Chancellor, and to the Treaſurer of England, to each a ring of the value of eight ſcutes; to every Earl and Biſhop, to the Keeper of the Privy Seal, to each Chief Juſtice, to the Chief Baron of the King's Exchequer, a ring worth ſix ſcutes; and to every other Lord of Parliament, to every Abbot and to every Prelate of diſtinction, to every worſhipful Knight, then and there preſent, to the Maſter of the Rolls, and to every Juſtice, a ring to the value of four ſcutes; to each Baron of the Exchequer, to the Chamberlains, and to all the great men at court then in waiting on the King, rings of a leſs value, in proportion to their rank and quality: ſo that there will not be the meaneſt clerk, eſpecially in the Court of Common Pleas, but there he will receive a ring convenient for his degree. Beſides, they uſually make preſents of rings to ſeveral of their friends and acquaintance. They give alſo liveries of cloth, of the ſame piece and colour, which are diſtributed in great quantities, not only to their menial ſervants, but to ſeveral others, their friends and acquaintance, who attended and waited on the ſolemnity of their creation; wherefore, though in the Univerſities, they who are advanced to the degree of doctors are at no ſmall expenſe at their creation, in giving round caps, and other conſiderable preſents: yet they do not give any gold, or preſents of like value; neither are at any expenſes in proportion with a Serjeant-at-Law. There is not in any other kingdom or ſtate any particular degree conferred on the practiſers of the law as ſuch; unleſs it be in the kingdom of England. Neither does it happen, that in any other country an advocate enriches himſelf ſo much by his practice as a Serjeant-at-Law. No one, be he never ſo well read and practiſed in the laws, can be made a judge in the Courts of King's Bench, or the Common Pleas, which are the ſupreme ordinary courts of the kingdom, unleſs he be firſt called to be a Serjeant at Law: neither is any one, beſide a Serjeant, permitted to plead in the Court of Common Pleas, where all real actions are pleaded: wherefore to this day, no one hath been advanced to the ſtate and degree of a Serjeant-at-Law, till he hath been firſt a ſtudent, and a barriſter, full ſixteen years: every Serjeant wears in court a white ſilk coif, which is a badge thatthey are graduates in law, and is the chief enſign of habit with which Serjeants-at-Law are diſtinguiſhed at their creation. Neither ſhall a Judge, or a Serjeant-at-Law, take off the ſaid coif though he be in the Royal

preſence and talking with the King's Majeſty. So that you will eaſily believe, moſt excellent Prince, that thoſe laws which are ſo honoured and diſtinguiſhed beyond the Civil Laws, or thoſe of any other kingdom whatſoever, and the profeſſion whereof is attended with ſo much ſolemnity and magnificence, are in themſelves exceeding valuable, excellent and ſublime, full of knowledge, equity and wiſdom.

Chap. LI.

Of the Judges in the Courts in Weſtminſter Hall.

THAT you may likewiſe know the eſtate of the Judges, as well as of the Serjeants-at-Law, I will, in the beſt manner I can, lay before you the method of their appointment, creation, and the nature of their office. There are uſually in the Court of Common Pleas five Judges, ſix at the moſt; in the Court of King's Bench four, and ſometimes five: when any one of them dies, reſigns, or is ſuperſeded, the King, with the advice of his council, makes choice of one of the Serjeants-at-Law, whom he conſtitutes a Judge, by his Letters Patent, in the room of the Judge ſo deceaſed, reſigning or ſuperſeded: which done, the Lord High Chancellor of England ſhall come into the court where ſuch vacancy is, bringing in his hand the ſaid letters patent; when ſitting on the bench, together with the Judges of the court, he introduces the Serjeant who is ſo appointed to be a Judge; to whom, in open court, he ſhall notify the King's pleaſure concerning his ſucceſſion to the vacant office, and ſhall cauſe to be read in public the ſaid letters patent: after which, the Maſter of the Rolls ſhall read to him the oath of office; when he is duly ſworn into his ſaid office, the Chancellor ſhall give into his hands the King's Letters Patent, and the Lord Chief Juſtice of the court ſhall aſſign him his place where he is to ſit, and make him ſit down in it. But you muſt know, my Prince, that the Judge, amongſt other parts of his oath, is to ſwear, that he will do equal law and execution of right to all the King's ſubjects, rich and poor, without having regard to any perſon. Neither ſhall he delay any perſon of common right, for the letters of the King, or of any other perſon, nor for any other cauſe, though the King, by his expreſs directions or perſonal commands, ſhould endeavour to influence and perſuade the contrary. He ſhall alſo ſwear that he ſhall not take by himſelf, or by any other, privily, nor apart, any gift or reward of gold, or of ſilver, nor of any other thing, the which might turn him to profit, unleſs it be meat or drink, and that of little value, of any man that ſhall have any plea, or proceſs, depending before him, and that he ſhall take no fees, as long as he be Juſtice, nor robe of any perſon, great or ſmall, in any caſe, but of the King himſelf. You are to know, moreover, that a judge ſo created is not to make any ſolemn entertainment or be at any extraordinary expenſe upon his acceſſion to his office and dignity; becauſe it is

no degree in law, but only an office and a branch of magiſtracy, determinable on the King's good pleaſure. However, from thenceforth, he changes his habit in ſome few particulars, but not in all: for when only a Serjeant-at-Law, he is clothed in a long robe, not unlike the ſacerdotal habit, with a furred cape about his ſhoulders, and an hood over it, with two labels or tippets; ſuch as the Doctors of Law uſe in ſome univerſities, with a coif, as is above deſcribed. But after he is made a Judge, inſtead of the hood he ſhall be habited with a cloak, faſtened upon his right ſhoulder; he ſtill retains the other ornaments of a Serjeant, with this exception, that a Judge ſhould not uſe a party-coloured habit, as the Serjeants do, and his cape is furred with minever, whereas the Serjeant's cape is always furred with white lamb; which ſort of habit, when you come in power, I could wiſh your highneſs would make a little more ornamental, in honour of the laws, and alſo of your Government. You are to know further, that the Judges of England do not ſit in the King's Courts above three hours in the day, that is, from eight in the morning till eleven. The courts are not open in the afternoon. The ſuiters of the court betake themſelves to the perviſe, and other places, to adviſe with the Serjeants-at-Law, and other their counſel, about their affairs. The Judges, when they have taken their refreſhments, ſpend the reſt of the day in the ſtudy of the laws, reading of the Holy Scriptures, and other innocent amuſements, at their pleaſure; it ſeems rather a life of contemplation than of much action: their time is ſpent in this manner, free from care and worldly avocations. Nor was it ever found that any of them has been corrupted with gifts or bribes. And it has been obſerved, as an eſpecial diſpenſation of Providence, that they have been happy in leaving behind them immediate deſcendants in a right line. "Thus is the man bleſſed that feareth the Lord." And I think it is no leſs a peculiar bleſſing, that from amongſt the Judges and their offspring, more Peers and great men of the realm have riſen, than from any other profeſſion or eſtate of men whatſoever who have rendered themſelves wealthy, illuſtrious, and noble by their own application, parts, and induſtry. Although the merchants are more in number by ſome thouſands; and ſome of them excel in riches all the Judges put together. This can never be aſcribed to mere chance or fortune, which is nothing; but ought to be reſolved, I think, into the peculiar bleſſing of Almighty God, who, by his Prophet, hath declared, that "the generation of the upright ſhall be bleſſed." And elſewhere the Prophet, ſpeaking of the righteous, ſays, "their children ſhall be bleſſed." Wherefore, my Prince, be a lover of Juſtice, which maketh rich and honourable, which perpetuates the generation of thoſe who love her; in order to this, be a zealous lover of the law, which is the parent of Juſtice, that it may be ſaid, and verified of you, which is written of the righteous, "Their ſeed ſhall endure for ever."

Chap. LII.

An Objection with regard to the Delays in Law Proceedings.

PRINCE. There remains but one thing, my Chancellor, to be cleared up, which makes me hesitate, and gives me disgust; if you can satisfy my doubts in this particular, I will cease to importune you with any more queries. It is objected that the laws of England admit of great delays in the course of their proceedings, beyond what the laws of any other country allow of; this is not only an obstruction to justice, but often an insupportable expense to the parties who are at law; especially in such actions where the demandant is not entitled to his damages.

Chap. LIII.

The Chancellor's Answer.

CHANCELLOR. In personal actions, which do not arise within the cities and trading towns, where they proceed according to usages and liberties of their own, the proceedings are in the ordinary way. Though they admit of great delays, yet they are not excessive. Indeed, in cities and towns, especially when the necessity of the case so requires, the process is speedy, as it is likewise in other parts of the world. But neither yet are the proceedings hurried on too fast, as it sometimes happens in other countries, by means wherof one or other of the parties is a sufferer. In real actions, almost everywhere the process goes on slow and tedious; but in England it is more expeditious. There are in France, in the Supreme Court of Parliament, some causes which have been depending upwards of thirty years. I myself know a case of appeal prosecuted in the said Court, which has been depending now these ten years, and it is likely will be so for ten years more before it can be decided. While lately at Paris, my host showed me his process in writing, which had been before the Court of Parliament for eight years, for four French sols rent, which of our money makes but eight pence, and he had no prospect of obtaining judgment in less than eight years more. I have known other cases of the same nature: and for what appears to me, the laws of England do not admit of so great delays as the laws of France. But it is really necessary there should be delays in legal proceedings, provided they be not too dilatory and tedious. By these means the parties, in particular the party prosecuted, is better provided with his proper defence, and advice of counsel, which otherwise neither of them could be,

either to profecute or defend. "Judgment is never ſo ſafe when the proceſs is hurried on." I remember once at an aſſizes and gaol-delivery at Saliſbury, that I ſaw a woman indicted for the death of her huſband within the year; ſhe was found guilty, and burnt for the ſame: in this caſe the Judge of aſſize, after the whole proceedings before him were over, might have reſpited the execution of the woman, even after the expiration of the year. At a ſubſequent aſſizes I ſaw a ſervant of the man who was ſo killed, tried and convicted before the ſame judge for the ſame murder, who made an ample public confeſſion that he was the only perſon who was guilty of the ſaid fact, and that his miſtreſs, who had been executed, was entirely innocent of it: wherefore he was drawn and hanged; and at the time and place of his execution he lamented the caſe of his poor miſtreſs, upon account of her innocence, and her being in no wiſe privy to her huſband's death. The fact being thus, how may we ſuppoſe the Judge to be affected with a ſenſe of conſcience and remorſe for being ſo haſty in awarding judgment of execution, when it was in his power to have ſtayed, for ſome time, further proceſs againſt her: he often owned to me, with concern, that he ſhould never be able to ſatisfy it to his conſcience for ſuch his precipitate behaviour. Deliberation often brings judgment to maturity, which ſeldom or never happens where the proceedings are too much hurried on. Wherefore the laws of England admit of eſſoins, a ſort of practice not known in the laws of other countries. Are not the vouchings to warranty of ſome uſe? The ſame may be ſaid of the aids of thoſe to whom the reverſion of land belongs, who bring the title in queſtion, and who have in their cuſtody the evidences to take out the title of the lands. The ſame may be ſaid of coparceners, who are to reſtore in proportion, if the eſtate allotted to one of them ſhould be evicted; and yet theſe are all delays, as I have formerly informed you. Even delays of this kind the laws of other countries do not allow, neither do the laws of England favour ſuch delays and imparlances as are frivolous and vexatious. And if at any time delays happen in pleading which are found to be miſchievous and inconvenient, they may be aboliſhed, or reformed, in every Parliament; nay, and all other laws uſed in England, where they do not anſwer the intention, or labour under any defect, may be corrected and amended in Parliament. So that all the laws of England, you will conclude from what has been ſaid, muſt needs be very good, either in fact or poſſibility. They are either ſuch already, or are eaſily capable of being made ſuch. And to this the kings of England are obliged, in virtue of a ſolemn oath taken at their coronation, as often as the neceſſity or equity of the caſe ſhall ſo require.

Chap. LIV.

Concluſion.

PRINCE. I am perfectly convinced, from the whole tenor of your diſcourſe, that the laws of England are not only good, but the beſt of laws for the particular Conſtitution of England. And if at any time ſome of them want amendment, it may be eaſily done by application to and in the way of Parliament, ſo that the kingdom either really is, or is eaſily capable of, being governed by the beſt of laws; and I am of opinion that the points you have advanced in this diſcourſe, and the juſt encomium you have given our laws, may be of ſome uſe to thoſe who ſhall be hereafter kings of England, ſince no king can govern with pleaſure by ſuch laws as he is not pleaſed with, or does not rightly apprehend. "The unfitneſs of a tool diſguſts the mechanic, and the bluntneſs of the lance or ſpear makes a daſtardly ſoldier." But as a ſoldier is animated to the battle when his arms are good, and himſelf expert in uſing them, according to Vegetius, who ſays, that "knowledge and experience in war breed and beget courage; and no one is afraid to do what he knows he can do well." So a king is animated and encouraged to do juſtice, when the laws by which it is adminiſtered are reaſonable and juſt, and he has a ſufficient knowledge of and experience in them. A general knowledge is ſufficient for him, leaving it to his judges to have a more exact and a more profound ſkill in them. So Vincentius Belvacenſis, in his book of Moral Inſtitution of Princes, ſays, that "every prince ought to have a general knowledge of the Holy Scriptures," which ſay, that "vain are all they in whom there is not the knowledge of God the Moſt High;" and it is written in the Proverbs, "Let knowledge be in the lips of the king, and his mouth ſhall not err in judgment." Yet a prince is not obliged to ſo critical an underſtanding of the Scriptures, ſuch as may become a profeſſor in divinity; a general inſight and acquaintance with them, as with the laws, is all that is neceſſary and required of him. Such had Charlemagne; ſuch had Lewis his ſon; ſuch had Robert, ſometime king of France, and who was author of this concluſion "Sancti ſpiritûs adſit Nobis Gratia," and many others, as the ſaid Vincentius, in the 15th chapter of the ſame book, evidently ſhows. Wherefore the doctors of the laws do ſay, that "an emperor carries all his laws in the cabinet of his own breaſt." Not that he really and actually knows all the laws, but as he apprehends the principles of them, their method and nature, he may properly enough be ſaid to underſtand them all. Moreover, he has it in his power to alter or abrogate them; ſo that all the laws are in him potentially, as Eve was in Adam before ſhe was formed. But ſince, my good Chancellor, you have now performed what you undertook at firſt, and have fully perſuaded me to apply myſelf to the ſtudy of the laws of my country, I will no longer detain you on this ſubject. But I now earneſtly deſire that you will proceed,

as you have formerly begun with it, to inſtruct me in the principles, method, and nature of the law of England; which law, I am reſolved, ſhall be ever dear to me, preferably to all other laws in the world, which it as far ſurpaſſes as the morning ſtar exceeds the other ſtars in glory and brightneſs. Since the intention is anſwered wherewith you were moved to this conference, time and reaſon require that we put an end to it. Rendering all due thanks and praiſe to Him who enabled us to begin, to carry on, and finiſh it, even Alpha and Omega, the beginning and the end, the firſt and the laſt; and "let everything that hath breath praiſe the Lord." Amen.

THE END.

DE DOMINIO REGALI ET POLITICO.

A TREATISE ON ABSOLUTE AND LIMITED MONARCHY;

AND IN PARTICULAR ON THE MONARCHY

OF ENGLAND.

BY SIR JOHN FORTESCUE, KNIGHT,

LORD CHIEF JUSTICE OF ENGLAND AND LORD CHANCELLOR

TO KING HENRY THE SIXTH.

THE text here printed is that which was publiſhed in the year 1714, by Lord Forteſcue, of Credan,[1] taken from a copy written by the hand of Sir Adrian Forteſcue, a great-nephew of the author, in the year 1532. Lord Forteſcue collated Sir Adrian's copy, as the preface to the volume informs us, with three others, namely, one among the MSS. of Archbiſhop Laud, in the Bodleian Library at Oxford, another in the ſame library among Sir Kenelm Digby's MSS, and a third in the Cotton Collection in the Britiſh Muſeum. Sir Adrian's text has been alſo collated for the preſent edition, by the Rev. T. Orlebar Payne, with a copy in the Lambeth Library; and I have myſelf compared it with a copy in the Harleian Collection in the Britiſh Muſeum, tranſcribed by the celebrated chronicler John Stow "with his own hand."

The variations among theſe ſix MSS. are generally trifling; the only ſerious differences being, firſt, that the Lambeth MS. goes no further than to the end of the eighteenth chapter; ſecondly, that the Laud MS. breaks off abruptly in the middle of a ſentence in the nineteenth chapter; and laſtly, that Stow's copy reads, near the end of the ſame chapter, "King Henry the Sixth," inſtead of "King Edward the Fourth," as all the other copies have it, including the Cotton copy—although this laſt is headed, in a different hand from that of its text, with the words, "This diſcours was wrighten to King Henry the Sixt by Sr John Forteſcue Lord Chancelor."

The antiquary Thomas Hearne mentions in his MS. Diary[2] that it was he who, about the year 1698 or 1699, tranſcribed Sir Adrian Forteſcue's MS. of the "De Dominio Politico et Regali," for Lord Forteſcue, who, he complains, "publiſhed the piece from my copy without any acknowledgment, or ſo much as ſending me a ſingle copy or any other gratuity."[3]

Hearne adds that he found the copy among Sir Kenelm Digby's MSS. and not among Mr. Selden's, as ſtated by Lord Forteſcue.[3] I have ſeen in Sir Adrian's MS. volume in

[1] A ſecond edition appeared in 1719. Both the editions have copious notes, and a learned diſſertation on the Saxon language.

[2] Hearne's MS. Diary, vol. li. ff. 13, 153 (Bodleian), A.D. 1714. Ibid. vol. lvi. ff. 5, 8, 21. Ibid. vol. cii. f. 166.

[3] Preface to his edition, p. xxxvi.

the Bodleian the words "vindicati tibi Kenelm Digby" written by himſelf on the firſt page, ſo that if Lord Forteſcue is correct in ſaying that one of the copies with which he compared Sir Adrian's was in the Digby Collection, Sir Kenelm muſt have poſſeſſed two independent MSS. of the Chancellor's work.

Notwithſtanding the occurrence in Stow's copy of the name of King Henry the Sixth, there cannot be any doubt as to the reign in which the work was compoſed; becauſe it affords internal evidence that it was written after the acceſſion of Edward the Fourth, as we ſhall ſee, by referring to a few paſſages. In one of them, in the ninth chapter, the Chancellor writes:—

"And in our days we have ſeen a ſubject of the French King in ſuch might that he hath given battle to the ſame King, and put him to flight, and afterwards beſieged him in Paris his greateſt city, and ſo kept him there unto the time his ſaid King had made ſuch end with him, his adherents, and fautors, as he deſired."

Now this "Great Subject"[1] could be no other than Charles Count de Charolois, eldeſt ſon of the Duke of Burgundy, who formed a league with other lords againſt Louis the Eleventh, called the league "du bien public," took arms againſt him, and defeated the King at the battle of Montlhéry in the year 1465.

And in the ſame ninth chapter, the King of Scotland, James the Second, who put to death the Earl of Douglas, and died in 1460, is called "the King of Scots that laſt died."

The expreſſion alſo in the laſt chapter that "The harms that fallen in getting of his realm bin now by him turned into our aller good and profit," evidently refers to the civil war which had placed Edward on the throne. While a paſſage in the tenth chapter referring to England as "this land" ſhows that Forteſcue wrote it in England, and therefore not earlier than the year 1471.

I think there can be no doubt but that this was the lateſt of his writings, nor that it was written when he had reached a very old age—although certainly his ſtyle had not loſt any of the vigour which characterizes his earlier work, De Laudibus, and is much leſs pedantic and more practical than his firſt tract, "De Naturâ Legis Naturæ."

A proof of the value ſet upon the work in early times,[2] may be found in the exiſtence of a very old Latin epitome of it, ſo long as to be almoſt a paraphraſe, which Hearne has preſerved, endorſed with the words "Sir John Forteſcue prepared for the preſs, Thurſday, Jan. 19, 1726." It is entitled, "Epitome ſingularis cujuſdam Politici diſcurſus, Edward IV. temporibus ſcriptus, ab aliquo magno viro (D. Joanne Forteſcuto ut videtur) ad regem de maximis rebus quæ ad præſentem ſuum ſtatum ſpectabant optime inſtruendum."

Sir Adrian has written at the end of his copy theſe words: "Explicet Liber compilatus

[1] Biog. Brit. vol. iii. p. 1695. [2] Rawlinson MSS. Misc. 224, Bodl.

et factus per Johannem Forteſcu militem quondam Capitalis Juſticiarius Angliæ, et hic ſcriptus manu propriâ mei Adriani Forteſcu, militi 1532."

The two ſhort pieces at the end, namely, "The Example what good Counſel helpeth," and "The twenty-two Righteouſneſſes that become a King," are taken from Stow's MS. already mentioned.[1] They are there joined with the treatiſe under the common title of "A treatiſe compiled by Sir John Forteſcue, Knight, Chief Juſtice of England, upon the Gouernance of the Kingdom of England," of which they form the firſt and laſt chapters; but as they are not ſo placed in any other MS. I have preferred to keep them ſeparate.

[1] Harl. MS. Brit. Mus. 542, f. 125.

ON THE MONARCHY OF ENGLAND.

Chap. I.

The Difference betwene Dominium Regale, and Dominium Politicum et Regale.

THER be two kynds of Kyngdomys, of the which that one ys a Lordſhip, callid in Latyne, *Dominium Regale*, and that other is callid, *Dominium Politicum et Regale*. And they dyverſen, in that the firſt may rule his People by ſuch Lawys as he makyth hymſelf; and therfor he may ſet upon them Talys,[1] and other Impoſitions, ſuch as he wyl hymſelf, without their Aſſent. The ſecund may not rule hys People, by other Lawys than ſuch as they aſſenten unto; and therfor he may ſet upon them non Impoſitions without their own Aſſent. This Dyverſite is well taught by Saynt Thomas, in hys Boke which he wrote, *Ad Regem Cipri de Regimine Principum*. But yet, it is more opynly treatid, in a Boke callid, *Compendium Moralis Philoſophiæ*, and ſumwhat by Gyls, in his Boke, *De Regimine Principum*. The Children of Yſraell, as ſaith Saynt Thomas, after that God had choſyn them, *in Populum peculiarem, et Regnum Sacerdotale*, were rulid by hym under Jugs, *Regaliter et Politice;* unto the tyme that they deſyryd to have a King, as than had al the Gentylys, which we cal Panyms, that had a Kyng, a Man, that reynyd on them *Regaliter tantum*. With which deſyer God was gretly offendyd, as wel for their Folye, as for their Unkyndneſs; that ſithen they had a Kyng, which was God, that reynid upon them Politykly and Royally, and yet would chaunge hym for a Kyng, a very Man, that would reynge upon them only Royally. And therefore God manaſyd them, and made them to be fearyd, with Thonders and other ferefull thyngs, from the Hevyn. And whan they would not leve their foly, the deſyer, he chargyd the Prophete Samuell to declare unto them, the Lawe of ſuch a Kyng as they aſkyd; which amongs other thyngs ſaid, that he would take from them their Londs and Goods, and gyfe them to hys Servaunts; and alſo ſet their Children in his Works and Labours, and do to them ſuch other many harmfull thyngs, as in the eighth Chapiter of

[1] Taxes.

the firſt Boke of Kyngs, it may appere. Whereas before that tyme, while they were rulyd only by God, Royally and Politykly, under Jugs, hyt was not lefull to any Man, for to take from them any of their Goods, or to grieve their Children that had not offendyd. Whereby it may appere, that in thoſe Days, *Regimen Politicum et Regale*, was dyſtyngwyd, *a Regimine tantum Regali*. And that it was better to the People to be rulid, Pollitykly and Royally, than to be rulid, only Royally. Saynt Thomas alſo in his ſaid Boke, prayſith moche, *Dominium Politicum et Regale*, bycauſe the Prynce that reynith by ſuch Lordſhip, may not frely fall into Tyranny, as may the Prynce, that Reynith, *Regaliter tantum*. And yet they both ar egall, in Eſtate and Power, as it may lightly be ſhewyd and provyd, by Infallible Reaſons.

Chap. II.

Why one King reynith Regaliter tantum, and an ther reynith, Politice et Regaliter.

HYT may peraventure be marvelid by ſome men, why one Realme is a Lordſhyp only Royall, and the Prynce thereof rulyth yt by his Law, callid *Jus Regale* and another Kyngdome is a Lordſchip, Royal and Politike, and the Prince thereof rulyth by a Lawe, callyd *Jus Politicum et Regale;* ſythen thes two Princes beth of egall Aſtate.

To this dowte it may be anſweryd in this manner; The firſt Inſtitution of thes two Realmys, upon the Incorporation of them, is the Cauſe of this diverſyte.

Whan Nembroth by Might, for his own Glorye, made and incorporate the firſt Realme, and ſubduyd it to hymſelf by Tyrannye, he would not have it governyd by any other Rule or Lawe, but by his own Will; by which and for th'accompliſhment thereof he made it. And therfor though he had thus made a Realme, Holy Scripture denyyd to cal hym a Kyng, *Quia Rex dicitur a Regendo;* Whych thyng he dyd not, but oppreſſyd the People by Myght, and therfor he was a Tyrant, and callid *Primus Tyrannorum*. But Holy Writt callith hym *Robuſtus Venator coram Deo*. For as the hunter takyth the wyld beſte for to ſele and eate hym; ſo Nembroth ſubduyd to him the People with Might, to have their ſervice and their goods, uſing upon them the Lordſchip that is callid *Dominium Regale tantum*. After hym Belus that was callid firſt a Kyng, and after hym his Sone Nynus, and after hym other Panyms; They, by Example of Nembroth, made them Realmys, would not have them rulyd by other Lawys than by their own Wills. Which Lawys ben right good under good Princes; and their Kyngdoms ar then moſt reſemblyd to the Kyngdome of God, which reynith upon Man, rulyng him by hys own Will. Wherfor many Cryſtyn Princes uſen the ſame Lawe; and therfor it is, that the Lawys ſayen, *Quod Principi placuit*

Legis habet vigorem. And thus I ſuppoſe firſt beganne in Realmys, *Dominium tantum Regale.* But afterward, whan Mankynd was more manſuete, and better diſpoſyd to Vertue, Grete Communaltes, as was the Feliſhip, that came into this Lond with Brute, wyllyng to be unyed and made a Body Politike callid a Realme, havyng an Heed to governe it; as after the ſaying of the Philoſopher, every Communaltie unyed of many parts muſt needs have an Heed; than they choſe the ſame Brute to be their Heed and Kyng. And they and he upon this Incorporacion and Inſtitution, and onyng[1] of themſelf into a Realme, ordeynyd the ſame Realme ſo to be rulyd and juſtyfyd by ſuch Lawys, as they al would aſſent unto; which Law therfor is callid *Politicum:* And bycauſe it is mynyſtrid by a Kyng, it is callid *Regale. Dominium Politicum dicitur quaſi Regimen, plurium Scientie, ſive Conſilio miniſtratum.* The Kyng of Scotts reynith upon his People by this Lawe, videlicet, *Regimine Politico et Regali.* And as Diodorus Syculus ſaith, in his Boke *de priſcis Hiſtoriis*, The Realme of Egypte is rulid by the ſame Lawe, and therefor the Kyng therof chaungith not his Lawes, without the Aſſent of his People. And in like forme as he ſaith is rulid the Kyngdome of Saba, in Felici Arabia, and the Lond of Libie; And alſo the more parte of al the Realmys in Affrike. Which manner of Rule and Lordſhip, the ſayd Diodorus in that Boke, prayſith gretely. For it is not only good for the Prince, that may therby the more fewerly do Juſtice, than by his owne Arbitriment; but it is alſo good for his People that receyve therby, ſuch Juſtice as they deſyer themſelf. Now as me ſemyth, it ys ſhewyd opinly ynough, why one Kyng rulyth and reynith on his People *Dominio tantum Regali*, and that other reynith *Dominio Politico et Regali:* For that one Kyngdome beganne, of and by, the Might of the Prince, and that other beganne, by the Deſier and Inſtitution of the People of the ſame Prince.

Chap. III.

Hereafter be ſchewyd, the Frutes of Jus Regale, and the Frutes of Jus Politicum et Regale.

AND hou ſo be it, that the French Kyng reynith upon his People *Dominio Regali:* Yet Saynt Lewes ſumtyme Kyng ther, ne any of his Progenytors ſett never Talys or other Impoſitions, upon the People of that Lond, without the Aſſent of the three Aſtatts, which whan thay be aſſemblid ar like to the Court of Parlemen[t] in Englond. And this order kept many of his Succeſſours until late days, that Engliſhmen made ſuch a War in Fraunce, that the three eſtats durſt not come to geders. And than for that Cauſe and for grete Neceſſite which the French Kyng had of Goods, for the

[1] Uniting.

defence of that Lond, he took upon hym to ſet Talys and other Impoſitions upon the Commons, without the Aſſent of the three Eſtats; but yet he would not ſet any ſuch chargs, nor hath ſet upon the Nobles, for feare of rebellion. And becauſe the Commons, though they have grutchid, have not rebellid or be hardy to rebell, the French Kyngs hath yearly ſythen, ſett ſuch chargs upon them, and ſo augmented the ſame chargis, as the ſame Commons be ſo impoveriſhid and diſtroyyd, that they may unneth[1] lyve. Thay drynke Water, thay eate Apples, with Bred right brown made of Rye. Thay eate no Fleſche, but if it be ſelden, a litill Larde, or of the Entrails, or Heds of Beſts ſclayne for the Nobles, and Merchaunts of the Lond. They weryn no Wollyn, but if it be a pore Cote under their uttermoſt Garment, made of grete Canvas, and cal it a Frok. Their Hoſyn be of like Canvas, and paſſen not their Knee; wherfor they be gartrid and their Thyghs bare. Their Wifs and Children gone bare fote; they may in non otherwyſe lyve. For ſum of them, that was wonte to pay to his Lord for his Tenement, which he hyrith by the Yere, a Scute, payyth now to the Kyng, over that Scute, fyve Skuts. Wher thrugh they be artyd[2] by neceſſite, ſo to watch, labour, and grub in the Ground, for their Suſtenaunce, that their nature is much waſtid, and the Kynd of them brought to nowght. Thay gone crokyd, and ar feble, not able to fyght, nor to defend the Realme; nor they have wepon, nor monye to buy them wepon withal; but verely thay lyvyn in the moſt extreme Povertie and Myſerye, and yet thay dwellyn, in one, the moſt fertile Realme of the World: wher thrugh the French Kyng hath not Men of his owne Realme, able to defend it, except his Nobles, which beryn non ſuch Impoſitions; and therfor thay ar ryght likely of their Bodys, by which cauſe the ſaid Kyng is compellid to make his Armys, and Retennys for the defence of his Land, of Straungars, as Scotts, Spaniards, Arragonars, Men of Almayn, and of other Nacions, els al his Ennymys might overrenne hym. For he hath no Diffence of his own, excepte his Caſtells, and Fortraſis. Loo this the frute of hys *Jus Regale*. Yf the Realme of Englond, which is an Ile, and therefor may not lightly get Socoures of other Londs, were rulid under ſuch a Lawe, and under ſuch a Prince, it would be than a Pray to all other Nacions that would conquere, robbe, and devouer yt; which was well prouvyd in the tyme of the Brytons, whan the Scotts and the Pyctes, ſo bette and oppreſſyd this Lond, that the People therof ſoughte helpe of the Romayns, to whom they had byn Trybutorye. And whan thay could not be defendyd by them, they ſought helpe of the Duke of Brytayne, than callid Litil Brytayne, and grauntyd therfor, to make his Brother Conſtantine their Kyng. And ſo he was made Kyng heere, and raynyd many Yers, and his Children after hym, off which grete Arthure, was one of their Yſſue. But bleſſid be God, this Lond ys rulid under a better Lawe, and therfor the People therof be not in ſuch penurye, nor therby hurt in their Perſons, but thay be wealthye and have al

[1] Scarcely. [2] I.e. coarcted, forced

thyngs neceſſayre, to the ſuſtenaunce of Nature. Wherfor thay be myghty, and able to reſyſte the Adverſariis of the Realme, and to bett other Realmes, that do or will do them wrong. Loo this is the Frute of *Jus Politicum et Regale*, under which we lyve. Sumwhat now I have ſchewyd you of the Frutys of both Lawys, *Ut ex fructibus eorum cognoſcatis eos*, &c.

Chap. IV.

Hereafter ys ſchewyd how the Revenuz of Fraunze be made grete.

SYTHEN our Kyng reygnith upon us by Lawys more favorable and good to us, than be the Lawys by the which the Frenche Kyng rulith his People, hit is reaſon we be to hym more good, and more profitable than be the Subgetts of the Frenche Kyng unto hym, whych it would ſeme that we be not, conſyderyng that his Subgetts yeldyn to hym more in one Yere, than wee do to our Soveryng Lord in two Yers, how ſo be it that thay do ſo, ageyn their Wills. Nevertheles whan it is conſyderyd, hou a Kyng's Office ſtondith in two Thyngs, one to defend his Realme ageyn their Ennemyes outward, by Sword, another, that he defendith his People ageyn wrong Doars inward, which the Frenche Kyng doth nott; ſythen he oppreſſith them more hymſelf, than would have done al the wronge Doars of the Realme, though thay had had no Kyng. And ſythen yt is a ſynne, to gyve no Mete, Drynke, Clothing, or other Almes, to them that have nede, as ſhall be declaryd in the day of Dome; hou mych a gretter Synne is it, to take from the pore Man, his Mete, his Drynke, his Clothyng, and al that he hath neede off? Which verely doth the Frenche Kyng to many a M[1] of his Subgetts, as it is opynly before declaryd. Whych thyng, though it be colowryd *per Jus Regale*, yet it is Tyrannye. For, as Saynt Thomas ſaith, whan a Kyng rulith his Realme onely to his own profytt, and not to the good of his Subgetts, he ys a Tyraunte. King Heroude reynyd upon the Jewys, *Dominio Regali*; yet whan he ſclough the Children of Iſraell, he was in that a Tyraunte, though the Lawes ſayen, *Quod Principi placuit, Legis habet vigorem.* Wherfor Achab, which reynyd upon the Children of Iſraell, by like Lawys, and deſyryd to have had Naboth, his Subgetts Vyneyard, would not by that Lawe take it from him, but proferyd hym the Value therof. For thees words, ſaid by the Prophete, *Prædic eis Jus Regis*, be not els to ſay but, *Prædic eis Poteſtatem Regis.* Wherfor as oftyn as a Kyng doth any thyng ageyn the Lawe of God, or ageyn the Lawe of Nature, he doth Wrong, notwithſtondyng the ſaid Lawe declared by the Prophete. And yt is ſo, that the Lawe of Nature woll, in this Caſe, that the Kyng ſchuld do, to his Subgetts, as he would be done to hymſelf, if he were a Subgett, which may not be that he would be almoſte deſtroyyd, as be

[1] Thouſand.

the Commons of Fraunce. Wherfor, albeit that the Frenche Kyng's Revenuz be, by ſuch meanys, miche gretter than be the Revenuz, which the Kyng, our Soveryng Lord, hath of us, yet they be not goodly takyn, and the Might of his Realme is here deſtroyyd therby. By which Conſideration I would not, that the Kyng's Revenuz of this Realme were made grete by any ſuch meanys; and yet of neceſſite thay muſt be gretter than thay be at this Day. And truly it is verey neceſſary that thay be alway grete; and that the Kyng have aboundantly, wherwith his Aſtate may be honorably kept for Right many Cauſys, of which ſume ſchal now hereafter be remembryd.

Chap. V.

The harmes that come of a Kyng's Povertie.

FIRST, if a Kyng be powre, he ſchal by neceſſite makes his Expences, and by ſuch that is neceſſarye to his Aſtate, by Creaunce of borrowyng, wher thowrowgh, his Creauncers wyll wynne upon hym the 4th or the 5th Penny, of all that he dyſpendith. And ſo he ſchal loſe, when he payyth, the 4th or 5th parte of his Revenuz; and thus be therby alway porer and porer. For Uſury and Cheveſaunce,[1] increſith the Povertie of hym that borowyth. His Creauncers ſchal always grutch for lacke of their Payment, and diffame his Highneſs of Myſgovernaunce, and Defaute of kepyng of Days; which yf he kepe, he muſt borowe as much at the Days, as at the firſt. For he ſchal be than porar than he was, by the Value of the 4th or 5th parte of his firſt Expenſes; and ſo be alway porar and porar, unto the tyme he be the poreſt Lord of his Lond. For ſuch maner of borowing, makyth the grete Lords to be porar than their Tenaunts. What Diſhonour is this, and abatyng the Glory of a Kyng! and yet yt is leſte to his owne ſewertie. For his Subgetts wol rather goo with a Lord, that is rich, and may pay their Wags and Expenſs, than with their Kyng that hath nowght in his Prys, but thay muſt ſerve hym, if they wil do ſo, at their own Diſpenſes. Item, if the Kyng be poer, he ſchal of neceſſite make his Gyſts and Rewards by Aſſignements, for which he ſchal have but litil thanke. For the poer Man had rather have a 100 Marks in hand, than a 100 Pound by any Aſſignement, which peraventure ſchal coſt hym right mych or he can gett his payment, and peraventure be never paid therof. And oftyntymes for lacke of Money, the Kyng ſchal be fayne to gyve away his Land, to ſuch as would have be fayner of a 100 Pound in hand, than of 40 Pound worth of Lond yerely, to the grete abating of his Revenuz, and Depopulation of his Realme. But the greteſt harme, that commith of a Kyng's Povertie, is, that he

[1] i.e. a compoſition between debtor and creditor

ſchal by neceſſite be artid, to fynd requiſyte meanys of getting of Goods, as to put Defaute in ſom of his Subgetts, that be Innocents, and upon the riche Man, more than the pore, becauſe that he may better pay; and ſo ſchewe Rigour ther as[1] Favor ought to be ſchewyd, and ſo ſchewe Favor ther Rygour ſchuld be ſchewyd, to the Perverſion of Juſtice, and Perturbance of the Peace and Quiet of the Realme. For, as the Philoſopher ſaith in his Eticks; *Impoſſibile eſt indigentem operari bona.* I needith nott now to ſpecifye, of the harmys whych commyth to a Realme by the Povertie of their Kyng, hou ſo be it thay be many moo than we have ſchewed yet; for every wiſe Man may ſee them opynly inowgh, but we muſt hould it for undoubtyd, that ther may no Realme proſpere, or be worſchipful and noble, under a poer Kyng.

Chap. VI.

Ordynaunces for the Kyng's Ordenarye Chargys.

AND ſethen it is neceſſarye that the Kyng be alway riche, whiche may not be without he have Revenuz ſufficyent for the yerely Mayntenaunce of his Eſtate; hyt is behoveful that we firſt eſteme, what his yerely chargs and expenſes be like to drawe unto. For after that, nedith his Revenuz be proporcyonyd, but yet they nedyn to be gretter than would be the chargs, for doute of ſodeyn Caſys, which mowe fal to hym, and to hys Realme. For Saynct Barnarde ſaith, that if a Mannys expences be egal to his Lyvelood, a ſodeyn Chaunce may deſtroy his Eſtate. The Kyngs yerly expences ſtondyn in chargs Ordynarye, and in chargs Extraordynary. His chargs Ordynary may not be eſchewyd, and therfor it nedith that ther be Lyvelood aſſignyd for the payment therof; which Lyvelood be in no wyſe putt to no other uſe. And if it happyn that any Patent be made of any parte thereof to other uſe, that than the Patent to be voyde, and of non effecte: Which thyng, yf it be fermely eſtablyſchid, the Kyngs Ordinary chargys may alway be paid in hand, and the Provyſyon of them may be alway made in ſeaſon; whych ſchal be worth to the Kyng the fourth or fifth part of the quantite of his expenſs for his Ordynarye chargs. This may in nothyng reſtrayne the Kyngs Power. For it is no Power to may alien, and put awaye: But it is Power to may have, and kepe to hymſelf. So it is no Power to may ſyne, and to do yll, or to may be ſyke, or wex old, or that a Man may hurt hymſelf. For all thees Powers comyne of Impotencye. And therfor thay may properly be callyd, non Powers. Wherfor the holy Spirites and Angels, that may not ſyne, wex old, be ſyke, or hurt themſelf, have more power than we that may harme our ſelf, with al the Defawts. So is the Kyngs power more, in that he may not putt from hym Poſſeſſions. Neceſſarijs

[1] i.e. whereas.

for his own Suſtenance, than if he might put them from hym, and alyene the ſame to his own hurt and harme. Nor is this ageyn the Kyngs Prerogatiffe, by whych he is exalted above his Subgetts: But rather this is to hym a Prerogatiffe. For no Man ſave he, may have ageyn the Land that he hath ons alyenyd. This Lyvelood aſſigned for the Ordynarye chargs ſchal afterward be never aſkyd of the Kyng. Nor his Highneſs ſchal thynk for that, that he hath the more Lyvelood to be gevyn away; but by reaſon therof he woll the more reſtrayne his Gyftes of other of his Lyvelood, conſyderyng that then it wol not be grete. And therfor he ſchal have more need of it, than thay that wol aſke it. The Ordynarye chargs, which the Writer hereof can now remember be thees; the Kyngs Houſhold, his Garde Robe. And hou ſo be it, that the Kyng liſte now, or will hereafter, make his Houſhold leſs than it was wont to be; yet his Highneſs ſchal then have therfore aboute his Perſone, for his Honour and Sewertie, Lords, Knights, and Eſquyers, and other alſo, in as grete nombre, or gretter than hys Houſhold was wonte to be, to hys chargs peraventure, as gretely as his Houſhold wel rulid was wont to ſtond hym yn. Wherfor herein, it nedith not to conſydre or to purvey, but only for the Kyngs Hous, which he may reſume or chaunge into his new maner, or other fourme at his Pleaſure, and as it ſchall be thought for the ſeaſons moſt expedyent. The expenſys of which Houſhold may ſone be eſtemyd by thes, which of old time have byn Officers theryn, and by the Clerks of the Eſcheker. The ſecund Ordynarye charge, is the payment of the Wags and Fees of the Kyngs grete Officers, his Courts, his Counceil, his Garde, and other Servaunts. Which charge woll alway be grete, and thees Men nedyn alway to be redely paid. For Indygence in them is not only unworſchipfull, but yt may do the moſt harme, that may fal of any nede in any Aſtate of the Lond, after the Kyngs moſt grete Eſtate. The third charge Ordynarye, is the payment of the kepyng of the Marches, wherin we bere much gretter charge yerely, than do the Scotts, which oftyntymes ys for favor, that we do to the Perſons that kepe them, which favour the Scotts do not. The fourth Ordynarye charge, is the kepyng of Caleys, which charge is well enowgh knowyn. The fifth Ordynarye charge, is for the Kyngs Werks, of which the yerely Expenſis may not certeynly be eſtemyd, but yet th' Accompts of the Clerks of the Werks, wil ſchewe the lykelyneſs thereof, while the Kyng makyth no new Werks. The kepyng of the See, I rekyn not amongs the Ordynarye chargs, hou be it the charge thereof is yerely borne, becauſe it is not eſtemable. And the Kyng hath therfor the Subſydye of Pondage and Tonnage. Nevertheleſſe by that reaſon, Pondage and Tonnage may not be rekyn'd as parcel of the Revenuz, which the Kyng hath, for the Mayntenaunce of his Eſtate, bycauſe it owght to be applyyd only to the kepyng of the See. And though we have not alway Warr upon the See, yet it ſchall be alway neceſſarye that the Kyng hath ſome Flote upon the See, for the repreſſyng of Rovers, ſavyng of our Merchaunts, our Fiſchars, and Dwellars upon our Coſts; but that the Kyng kepe alway, ſome grete and mighty Veſſels, for the brekyng of an Army, whan any ſchall be made ageyn him upon the

See. For than, it ſchal be to late to do make any ſuch Veſſels. And yet without them, all the Kyngs Navye ſchall not ſuffice to bord with Caryks and other grete Schippis, nor yet to may breke a mighty Flote gatheryd of Purpoſe. Now, as I ſuppoſe, is rekenyd the gretteſt parte of the Kyngs Ordynarye chargs. Wherefor we wyll next, to his Extraordynary chargs, as far as ſchal be poſſible to us.

Chap. VII.

The Kyngs Extraordynarye Chargys.

THE Kyngs Extraordynarye chargys ar ſo cafuel, that no Man may knowe them in certeynte, but he may eſteme what ſume thay be not like to excede, but if ther fal a Caſe over much exorbitant; and than it ſchal be reaſon and alſo neceſſarye, that al the Realme beare for that caſe a ſingular charge. Such of the ſaid Extraordinary chargs, as the Writer herof can now remember, be thees. Firſt, the Kyng ſchal oftyntymys ſend out of this Lond, his Ambaſſadours, as wel to the Pope, as to dyvers Kyngs, Princes, and Nations;[1] and other while he ſchal ſend his Procurators and Meſſengers, to the Counſeils Generall. Which Ambaſſatours, Procurators, and Meſſengars, ſchal nede to be honorably accompanyd, and wel be ſeen, as wel for the honor of the Kyng, and the Realme, as for the avaunſyng of the Matters, for which they ſhall be ſent to the Kyngs grete charge, which ſchal be more or leſs, after their long or ſchorte Abode, and devoire in their Voyage. Item, The Kyng ſchal bere yerely chargs unknowyn, in receyvyng of Legats and Meſſangers ſent from the Pope, and Ambaſſators ſent from Kyngs and Princis, and alſo from grete Counceils[2] beyond the See, which wil put the Kyng to grette expenſis, while thay be here; and at their departyng, thay muſt needs have grete Gifts and Rewards, for that befittith the Kyngs Liberalite; alſo it is neceſſarye for the Honour of the Realme. Item, Sythen it is not good, that he reward ſuch as do, or ſchal do to hym Sarvice, and other maner of Pleaſurs, with Poſſeſſions and Revenuz of his Crowne, or with the Poſſeſſions of his Enherytaunce; for thay be much more neceſſarye for the Suſtenaunce of hys grete Aſtate; hyt ſchal therfor be neceſſarye, that the Kyng make ſuch Rewards, with Money out of hys Coffers, and that ſume of them have ſo largely therof, as thay may bye them Land withal, if thay will. For by this mean, the Kyngs Eſtate ſchal alway be kepte unblemeſchid, and of ſume man his Highneſs ſchal have more thank for Money than for Lond. And alſo Money is moſt mete and convenient Reward, for hym that hath not long ſervyd. This Charge woll alway be gret, and ſo ineſtimable gret, that in ſum yere, a grete Lords Lyvelood ſchall not ſuffice to beere it, although he would fell grete parte of his Lordſchip. And truly, whan the Kyng rewardyth his Servaunts in this maner, he ſchewyth grete favor to al his Realme. Item, It

[1] Lambeth and Stow's MSS. inſert before "Nations," "greate Communities of othar."

[2] For "Counceils," Lambeth and Stow's MSS. read "Comenalties."

ſchal nede, that the Kyng have ſuch Treaſure, that he may make new Byldyngs, whan he wil, for his Pleſure and Magnificence. And as he may bye hym riche Apparel, riche Furres, other than be wont to fal under, and be in the yerely chargs of his Wardrober, riche Stonys, Serples,[1] Bawdericks, and other Jewells and Ornaments convenyent for his Aſtate Royall; ſo oftyntyms his Highneſſe muſt and will bye riche Hangyngs, and other Apparels, for his Houſys, Weſſels, Weſtments, and other Ornaments for his Chapel; bye alſo Horſes, and Traps of grete Price, and do other ſuch noble and grete Coſts, as befyttith his Royal Mageſtie, of which it is not now poſſible to the Writer herof, for to remember the Eſpecialities. For if a Kyng did not ſo, nor might do, he lyvyd not like his Eſtate, but rather in myſerye, and more in ſubjection than dothe a private Perſon. Item, the Kyng ſchal oftyntymys ſend his Commyſſioners in gret Myght, and alſo his Jugs to repreſſe and ponyſche Riotours and Ryſars; for whiche cauſe, he ſchal other whilys ryde in his own Perſone, mightylye accompanyd; which thyng wol not be done without gret Coſts. For no man is bowndyn to ſerve hym in ſuch Caſys, at his own Diſpenſys. Item, If ther come a ſodein Armye upon this Lond; by See or by Land, the Kyng muſt encountre them, with a like Armye, or a gretter, for the expenſis wherof, he ſchal not ſo ſodenly have Ayde of his People. Wherfor he muſt then do thes expenſes with Money out of his Coffers, or put his Land in Jeopardye. Loo now we have remembrid grete Parte of the Kyngs Extraordynarye Charges. And before is ſchewyd, grete parte of his Ordynary chargs. Wherfor now it is time that it be ſchewyd, hou the Kyng may have Revenuz and Lyvelood, ſufficyent to bere thees two Chargs.

Chap. VIII.

If the Kyngs Lyvelood ſuffyce nott, his Subgettys aught to make yt ſuffycyent.

Hyt is ſchewyd before, hou neceſſarye it is, that Lyvelood ſufficient be aſſignyd for the Kyngs Ordenarye chargs, and that the ſame Lyvelood be only applyyd therto, and not alienyd in tyme coming. For that aſſignment may in no wiſe hurt the Kyng, conſederyng that if any parte of the Revenuz therof, remayne over the payment of the ſame Ordynarye chargs, that ſo remaynyng, is the Kyngs own Money, which he may than employ to other Uſys, at his Pleaſure. And it is undoubtid that the Kyng hath Lyvelood ſufficyent which may be ſo aſſigned, for his Ordynarye chargys. Wherfore now, we have nothing els to be ſerchid, but what Lyvelood the Kyng hath for the payment of his chargys Extraordynarye, over ſo much Lyvelood, as ſchal be aſſigned for his chargis Ordynarye; and if he ſchal not have Lyvelood ſufficient therto, hou than may his Lyvelood be made ſufficyent. For his Realme is boundyn by Right to ſuſteyn hym, in every thyng neceſſarye to his Aſtate. For as Saynt Thomas ſayth, *Rex datur propter*

[1] i.e. mantles.

Regnum, et non Regnum propter Regem. Wherfor al that he dothe, owith to be referryd to his Kyngdome. For though his Aſtate be the higheſt Aſtate Temporal in the Erthe, yet it ys an Office, in the whiche he mynyſtrith in his Realme, Defence and Juſtice. And therfor he may ſay of hymſelf, as the Pope ſayth of hymſelf and of the Church, in that he wrytyth, *Servus Servorum Dei.* By whiche reaſon, right as every Servaunt owyth to have his Suſtenaunce of hym that he ſervyth, ſo owght the Pope to be ſuſteynid by the Chirche, and the Kyng by his Realme. For *Nemo debet propriis expenſis militare.* And our Lord ſaith, "*Dignus eſt Operarius cibo ſuo.*"[1] Wherfor ſithen every Realme is boundyn to ſuſteyn his Kyng, yet much more be we boundyn thereto, upon whom our King reynith by ſo favourable Lawys, as is before declarid, &c.

Chap. IX.

Hereafter be ſchewyd the Perilles that may come to the Kyng, by over myghty Subgetts.

BUT ſithen the ſaid Extraordynarye chargs be ſo uncerteyn, that they be not eſtemable, it is not well poſſible to put in certeynte, what Lyvelood woll yerely ſuffice to bere them. Wherfor we nede in this caſe to uſe Conjecture and Imaginacion, as to think that ther is no two Lords Lyvelood in Englond, ſufficient to bere the Kyngs Extraordynarye chargs. Than nedith it, that the Kyngs Lyvelood above ſuch Revenuz, as ſchal be aſſigned for his Ordynarye chargs, be gretter than the Lyvelood of two the gretteſt Lords in Englond. And peraventure, whan Lyvelood, ſufficyent for the Kyngs Ordynarye chargs, is lymyted and aſſigned therto, yt ſchall appere, that dyvers Lords in Englond have as much Lyvelood of their own, as than ſchal remayne in the Kyngs hands, for his Extraordynarye chargs; which were inconvenient, and would be to the Kyng ryght dredefull. For than ſuch a Lord may dyſpend more than the Kyng, conſyderyng that he is chargyd with no ſuch chargs Extraordynarye, or Ordynarye, as is the Kyng; except an Houſhold, which is but litil in comparyſon to the Kyngs Houſe. Wherfor if it be thus, yt ſchal be neceſſarye, that ther be parveyyd for the Kyng, moche gretter Lyvelood than he hath yet. For Mannys Corage is ſo noble, that naturally he aſpyryth to hye thyngs, and to be exaltyd. And therfor inforſith hymſelf to be alway gretter and gretter. For which the Philoſopher ſaith, *Omnia amamus ſed Principare majus.* Wherfor it hath comyn that often tymes, whan a Subgett hath had as grete Lyvelood as his Prince, he hath anone aſpyryd to the Aſtate of his Prince, which by ſuch a man may ſone be gotten For the Remenaunte of the Subgetts of ſuch a Prince, ſeying that if ſo mighty a Subgette myght obtayne th'aſtate of their Prince, thay ſchuld than be under a Prince doble ſo mighty as was their old Prince; which encreaſe many Subgetts deſyren, for their own Diſcharge of that they beryn to

[1] The Lambeth and Stow's MSS. add here, "Wherefore the Apoſtell ſcythe *Communicet is qui catechizatur verbo, ei qui ſe catechizat in omnibus bonis.*"

the Suftenaunce of their old Prince; and therfor would right gladly helpyn fuch a Subgett in his Rebellion. And alfo fuch an Enterprife ys the more feable, whan fuch a Rebell hath more Richeffe than his Soveryng Lord. For the people woll goo with hym, that beft may fufteyne and reward them. This manner of doyng hath byn fo ofte practyfyd, almoft in every Realme, that their Cronycles ben full of ytt. In the Realme of Fraunce was never chaunge of their Kyng, fythen it was firft inhabityd by Frenche men, but by the Rebellions of fuch mighty Subgetts; as Hildericus Kyng of Fraunce, defcendid of Clodone, which was firft Criften Kyng of Fraunce, was put down by Pypyne Son of Carolus Marcellus, which was the moft mighty Subgett, that unto thes dayys was ever feen in the Realme of Fraunce. And afterwards Charles, defcendyd of Carolus Magnus, Sonne to the faid Pepyne by nine or ten Generations, was put from the Kyngdome of Fraunce by Hugh Capite, Son to Hugh Magnus Erle of Parys, which than was the mightieft Subgett of Fraunce, and therfor creatyd and callid *Dux Franciæ*. And in our days, we have feen a Subgett of the Frenche Kyng in fuch Myght, that he hath gyvyn Battel to the fame Kyng, and put him to Flight, and afterward befegid him in Parife his gretteft Cyte, and fo kepte hym ther, unto the time his faid Kyng had made fuch End, with him, his Adherents and Fautours, as he defired. We have alfo feen in our Realme, fum of the Kyngs Subgetts gevyn hym Batell, by occafyoun, that their Lyvelood and Offices were the gretteft of the Lond; and els they would, nor could have done fo. The Erlys of Lyceftre, and of Glouceftre, which than war the gretteft Lords of England, rofe ageyn theyr Kyng Herry the Thirde, and toke hym and his Son Prifoners in the Feld. Whiche maner of Demeanyng, the Kyng of Scotts that laft dyyd, dredyng to be practyfyd in his Lond, put out of the fame Lond, the Erles Dowglas, whofe Lyvelood and Myght was nerehand equivalent to his owne, movyd therto by non other Caufe, fave only drede of his Rebellion. The Cronycles of every Realme, and in efpecyall of Spayne and Denmarke, be full of fuch Enfamples. And fo be alfo the Boks of Kings in Holy Scripture; wherfore yt nedyth not to write more herein. And alfo it may not be efchewyd, but that the grete Lords of the Lond, by reafon alfo of new Difcents fallyng unto them, by reafon alfo of Maryags, Purchafys, and other Tytles, fchal often tymes growe to be gretter than thay be now, and peraventure fum of them, to be of Lyvelood and Power like a Kyng; which fchal be right good for the Land, while thay afpyre to non hyer Aftate. For fuch was the Cafe of a great Duke,[1] that warryd with the Kyng of Spayne, one of the myghtyeft Kyngs in Cryftendome, in his own Realme; but this ys writyn only to the entent, that it be wel underftaund, hou neceffary it ys, that the Kyng have grete Poffeffions, and peculiar Lyvelood, for his own Sewerte; namely, whan any of his Lords fchal happyn to be fo exceffively grete, as ther myght therby growe Perell to his Aftate. For certeynly, ther may no gretter Perill growe to a Prince, than to have a Subgett equipolent to himfelf.

[1] Lambeth and Stow's MSS. read, for "fuch was the Cafe of a great Duke," "fuch was the Duke of Lancaster."

Chap. X.

How that the Crown may be beſt endowed.

NOW that the likeneſs of the Kyngs chargs Ordynarye and Extraordynarye be ſchewyd, and over that hou neceſſarye it is, that he have grete Lyveloods above the ſame chargs, in the whiche hit nedith, that he excede gretely every Man of his Land, which Lyveloode undoubtyd he hath not at this day; yt is therfor behoveful that we now ſerche hou the Kyng may have ſuch Lyvelood; but firſt, of what Comodytys it may beſt be takyn. The Kyng of Fraunce, ſometyme might not diſpend of his Demaynys, as in Lordſchippis, and other Patrymonye peculier, ſo mich as might than the Kyng of Englond; which may well appere, by that the Qwene of Fraunce hath but Fyve Thouſand Marks yerely to hyr Dower, wher as the Qwene of Englond hath Ten Thouſand Marks. For in thoos dayys ther was but litil more of the Realme of Fraunce in the Kyngs hands, but that parte which is callid the Ile of Fraunce. For al the remenaunt of the Realme, as Burgoyne, Normandye, Guyane, Champayne, Languedok, and Flaunders, with many other ſuch grete Lordſchippis wer then in the hands of Duſeperys,[1] and other Princis and gret Lords. For which Cauſe the Gabell of the Salte, and the Quaterymes of the Wynys, war granted to the Kyng, by the three Eſtats of Fraunce, which was, nor is no lityl Subſydye. For ther is no Man in Fraunce that may eate Salte, but if he bye it of the Kyng; and that is now ſett to ſo grete Price, that the Buſhell which the Kyng byyth for iij*d.* or iv*d.* is Sould to his People for ij*s.* and other whilis for more. And the fourth Pype of the Wynys that be made in Fraunce, may be no litill thyng; ſythen the Fillyng of the Wynys ys the gretteſt Comodite of the Realme; but that Comodite we have not in this Land. Wherefore ther is no parte of thoos maner of Subſydeys that might be good for owr Soveryng Lord, but if it war, that he might ſell to his Subgetts the Salte that comyth hether. Yn which thyng he ſchall have more Grutch of the People, that Profyte. For in Fraunce, the People ſalten but litill meate, except their Bacon, and therfor they would bye lityl Salt; but yet they be artyd to bye more Salte than they would. For the Kyngs Officers bryng to their Houſys every yere, as moch Salte as by their Conjecture ys reaſonable, to the nombre of the Men, Women, and Children that dwellyn theryn, for which they ſchal pay though they wold not have ſo myche. This Rule and Order wold be Sore abhorred in Englond, as well by the Merchaunts that be wontyd to have their Freedome in byyng and ſellyng of Salte, as by the People that uſen mich to ſalte their Meats more than do the French Men; by occaſyon wherof thay wol than at every Meale grutche with the Kyng, that entreatith them more rigorouſly than his Progenitours have done. And ſo his Highneſs ſchal have therof, but as had the Man that ſcheryd his Hogge, moche Crye and no[2] Wull. In Flanders and other Lordſcippis of the Duke of Burgoyne downward, he

[1] A corruption of either "Douze Pairs," or of "Ducs et Pairs;" the Laud MS. reads "Duſſepers;" the Digby MS., "Ducypers;" and Stow's MS., "Douſepieres."

[2] For "no" the Lambeth and Stow's MSS. read "litle."

taketh certeyn Impoſicions made by hymſelf upon every Oxe, every Schepe, and upon other thyngs ſould, and alſo upon every Veſſel of Wyne, every Barell of Beer, and other Vytayls ſould in his Lordſchip, which is no litill Revenue to hym yerely; but yet he dotl it, magre the People, which God defend that the Kyng our Soveryng Lord ſchuld do upon his People, without their Graunts and Aſſents. Nevertheleſs with their Aſſents, ſuch maner of Subſydye, if ther could not be found a better Meane of the encreaſing of the Kyngs Revenuz, were not unreaſonable. For theryn, and yn the Gable of Salt, every Man ſchal bere the charge therin equally. But yet I would not, that ſuch a new Cuſtome and Charge were put upon the People, in our Soveryng Lords dayes, with which his Progenitors chargyd them never, if a better and more convenient way could be found. Kyng Salamon chargid his People with gretter Impoſicions, than they were wontyd to, before his days. And becauſe his ſon, Kyng Roboham, would not eaſe them thereoff, the tenne Parts of the People, devydyd into twelve Parts, departed from him, and choſe them a new Kyng, and came never after that time under his Subjection. Of which Departyng God ſaid himſelf afterward, *A me factum eſt iſtud.* Which is an Example, that it is not good for a Kyng to over-fore charge his People. Wherfore methynkith, that if the Kyng might have his Lyvelood for the Suſtenaunce of his Aſtate, in grete Lordſcippis, Manors, Fee Fernys, and ſuch other Demaynys, (his People not chargyd), he ſchuld kepe to him holy, their Hearts, and excede in Lordſchipps, al the Lords of his Realme; and then ſchuld non of tham growe to be like unto hym; which thyng is moſt to be fearyd of all the World. For than within few Yers, ther ſchuld not remayne Lordſchips in his Realme, by which they might growe ſo grete, nor that thay might growe ſoch by Maryages, but if the Kyng would it. For to hym fallyn al the grete Maryages of his Land, which he may diſpoſe as hym lyſte. And by Dyſcente ther ys not like to fall gretter Heritage to any Nobleman than to the Kyng. For to hym byn Coſyns, the moſt, and the gretteſt Lords of the Realme. And by Eſchetes, ther may not ſo mich Land fall to any Man as to the Kyng, becauſe that no Man hath ſo many Tenaunts as he; and alſo no Man may have the Eſchetes of Treaſon but hymſelf, and by Purchaſe. Yf this be done, ther ſchall no Man ſo well encreaſe his Lyvelood as the Kyng. For ther ſchal none of his Tenaunts alien Lyvelood without his Licenſe, wherein than he may beſt prefarr hymſelf. Nor ther ſchal no Lyvelood be kepte ſo hole as the Kyngs, conſyderyng that he may not for his Honor, ſell his Lond, as other men may do; and alſo his ſellyng would be the hurt of all hys Realme. Such was the ſellyng of Chirk, and Chirks Lond, whereof never Man ſawe a Preſydent, and God defend, that any Man ſee mo ſuch hereafter. For ſellyng of a Kyngis Lyvelood, ys properly callyd Dilapidation of his Crowne, and therfor it is of grete Infamye. Now we have found undoubtydly, what maner of Revenuz, is leſte for the Endowment of the Crowne. But ſythen it ys ſaid before, that the Kyng hath not at this Day ſufficyent therto, it is moſt convenyent that we now ſerche, hou his Highneſs may have ſufficyent of ſuch Revenuz, which we may now fynd to be beſte therfore.

Chap. XI.

Hereafter is ſchewyd, what of the Kyngs Lyvelood gevyn away, may beſt be takyn ageyne.

THE Holy Patriarke Joſeph, while he, under Pharoo the Kyng, governyd the Lond of Egipte, rulid and ſo intreatid the People thereof, that thay grauntyd to pay, and payyd to the ſame Kyng, the fifth Part of their Graynys, and of all other thyngs that growyd to them yerely of the Erthe; which Charge they beren yet, and ever ſchal bere. Wherthorough, their Prince, which now is the Sowdan of Babylone, is one of the mightyeſt Princis of the World; and that notwithſtondyng the ſame Egypcians ar the richeſt Comons that lyvyn under any Prince; whereby, we be lernyd that it ſchal not only be good to our Prince, but alſo to our ſelf, that he be well endowyd, for elſe the Patriarke would not have made ſuch a Treatye. The French Kyng, in one thyng, that is to ſay, in Wyne, takyth more of his People than doth the Sowdan; for he takyth the fourth Penny therof, but yet he takyth nothyng of their Graynys, Wolls, or of any other Goods that growith to them of their Lond. The Kyng our Soveryng Lord had, by tymes, ſythen he reynyd upon us, Lyvelood in Lordſchippis, Lands, Tenements, and Rents, nerehand to the Value of the fifth Part of his Realme, above the Poſſeſſions of the Chirche, by which Lyvelood, if it had abydyn ſtyl in his Hands, he had byn more myghty of good Revenuz, than any of the ſaid two Kyngs, or any Kyng that now reynith upon Criſten Men. But this was not poſſible to have be done. For to ſumm parte therof, the Heyrs of them that ſumtyme owyd it, be reſtoryd; ſumm by reaſon of Taylys,[1] ſumm by reaſon of other Tytles, which the Kyng hath conſyderyd, and thought them good and reaſonable. And ſumm of the ſame Lyvelood, hys good Grace hath gyvyne, to ſuch as hath ſervyd hym ſo notably, that as their Renowne wol be eternal, ſo it befatt the Kyngs Magnifycence, to make their Rewards, everlaſting in ther Heyrs, to his Honor, and ther perpetual Memorye. And alſo the Kyng hath gevyn part of his Lyvelood, to his moſt honorable Brethren, which not only have ſervid him in the manner aforeſaid, but byn alſo ſo nigh in Blode to his Highneſs, that yt befatt not his Magnifycence to have done otherwiſe. Neverthelefs ſom Men have done hym Service, for whiche it is reaſonable that his Grace had rewardyd them; and for lack of Money, the Kyng than rewardyd them with Land. And to ſome Men he hath done yn likewiſe, above their Demerits, thorowe Importunytye of their Sewts. And it is ſuppoſyd, that to ſom of them is gevyn C[l]. worth Land yerely, that would have hold hym content with CC[l]. in Money, if thay might have had it in Hand. Wherfor, it is thought, yf ſuch

[1] i. e. entails.

Gyftys, and namely thoos whiche have ben made inconſyderately, or above the Meryts of them that have them, ware reformyd; and thay rewardyd with Money, or Offices, or ſomwhat Lyvelood for Term of Life, which after their Deths, would than returne to the Crowne; the Kyng ſchuld have ſuch Lyvelood as we now ſeke for, ſufficyent for the Maintenaunce of his Aſtate. And if it would not than be ſo grete, I hould it for undoubtyd, that the People of his Lond, wol be willyng to graunt hym a Subſidye, upon ſuch Commodities of hys Realme, as be before ſpecyfyd, as ſchal accompliſh that which ſchal lack hym of ſuch Lyvelood. So that hys Highneſs woll eſtabliſh the ſame Lyvelood than remaynyng, to abyde perpetually to his Crowne, withoute tranſlating thereof to any other Uſe. For elſe, whan that ſchal happyn hereafter to be gevyn away, hytt ſchal nede that hys Commons be chargyd with a Newe Subſydye, and be alway kepte in Povertie.

Chap. XII.

Hereafter ys ſchewyd, wh.at Harme would come to England, if the Commons thereof were Pore.

SOME Men have ſaid, that it war good for the Kyng, that the Comons of England wer made poer, as be the Comons of Fraunce. For than, thay would not rebell as now thay done often tymes; which the Comons of Fraunce do not, nor may do; for they have no Wepon, nor Armor, nor Good to bye it withall. To thees maner of Men, may be ſaid with the Philoſopher, *Ad parva reſpicientes, de facili enunciant*; that is to ſay, thay that ſeen fewe thyngs, woll ſone ſay their Advyſe. Forſothe thoos folkys conſyderyn litil the Good of the Realme of Englond, wherof the Might moſt ſtondyth upon Archers, which be no rich Men. And if thay were made porer than they be, they ſchuld not have wherewith to bye them Bowys, Arrowes, Jakkes,[1] or any other Armor of Defence, whereby thay might be able to reſyſte our Ennymyes, whan thay liſte to come upon us, which thay may do on every ſyde, conſydering that we be an Ileland; and as it ys ſaid before, we may not have ſone Socors off any other Realme. Wherfor we ſchuld be a Pray to al other Ennymyes, but if we be mighty of our ſelf, which Might ſtondith moſt upon our poer Archers; and therfor thay nedyn, not only to have ſuch Abilyments as now is ſpoken of, but alſo thay nedyn to be mich exercyſyd in ſchotyng, which may not be done without right grete Expenſys; as every Man experte theryn knowyth right well. Wherfor the makyng poer of the Comons, which is the makyng poer of our Archers, ſchuld be the Diſtruction of the gretteſt Might of our Realme. Item, If poer Men may not lightly ryſe,

[1] Coats of mail.

as is the Opynyoun of thoes Men, which for that cauſe would have the Comons poer; hou than, if a mighty Man made a Ryſyng, ſchuld he be repreſſyd; whan all the Comons be ſo poer, that after ſuch Opynyoun thay may not fyght, and by that reaſon not help the Kyng with fyghtyng? And why makyth the Kyng the Commons to be every Yere muſteryd; ſythen it was good thay had no Harneſs, nor wer able to fyght? O hou unwiſe is the Opynyoun of thees Men; for it may not be mantenyd by any Reaſon! Item, whan any Ryſyng hath byn made in this Land, before thees dayys by Comons, the poreſt Men thereof, hath byn the gretteſt Cauſars and Doars theryn. And thryfty Men have ben loth therto, for Drede of loſyng of their Goods, but yet often tymes thay have gone with them thorough Manaſys,[1] or els the ſame poer Men would have takyn their Goods; wherin it ſemyth that Povertye, hath byn the hole and cheffe Cauſe of al ſuch Ryſyng. The poer Man hath ben ſtyryd therto, by occaſyon of his Povertye, for to get Good; and th: riche Men have gone with them, becauſe thay wold not be poer, by leſyng of their Goods. What than would fal, if al the Comons were poer? Truly it is like, that this Land than, ſchuld be like unto the Land of Boeme, wher the Comons for Povertye roſe upon the Nobles, and made al their Goods to be comon. Item, It is the Kyngs Honor, and alſo his Office, to make his Realme riche; and yt ys Diſhonor whan he hath a poer Realme, of which Men woll ſay, that he reygnyth upon Beggars; yet it war mych gretter Dyſhonour, if he fownd his Realme riche, and than made it poer. And alſo it were gretely ayenſte his Conſyence, that awght to defend them, and their Goods, if he toke from them their Goods, without lawfull Cauſe; from the Infamye whereof God defend our Kyng, and gyve him Grace to augment his Realme in Ryceſſe, Welth, and Proſperyte, to his perpetual Lawde and Honour. Item, the Realme of Fraunce gevyth never frely of their own good Will, any Subſydye to their Prynce, becauſe the Comons therof be ſo poer, as thay may not gyve any thyng of their own Goods. And the Kyng ther, aſkyth never Subſydye of his Nobles, for drede that if he chargyd them ſo, thay would confedre with the Comons, and peraventure putt hym downe; But our Comons be riche, and therfor they gave to their Kyng, at ſum tymys Quinſimes and Diſmes, and often tymys other grete Subſydyes, as he hath nede of their Goods for the Defence of his Realme. How grete a Subſydye was it, whan this Realme gave to their Kyng, a Quinſime and Diſme Quinquinall, and the ixth Flees of their Wolls, and the ixth Scheff of their Graynys, for the Terme of five Yers. This might thay not have done, if they had ben empoveryſhyd by their Kyng, as the Comons of Fraunce; nor ſuch a Graunte hath byn made by any Realme of Criſtyndome, of which any Cronycle makyth mention. Nor non other Realme may, or hath Cauſe to do ſo. For thay have not ſo mich Fredome in their own Goods, nor be entreatyd by ſo favourable Lawys as we be, except a fewe Regyons before ſpecyfyed. Item, Wee ſee dayly, hou Men that have

[1] i. e. menaces.

loſt their Goods, and be fallyn into Povertie, becomyn amon Robbers and Theſes, which would not have be ſuch, yf Povertie had not brought them thereto. How many a Theſe than wer like to be in this Land, if al the Comons were poor. The gretteſt Sewertie truly, and alſo the moſt Honour that may come to the Kyng is, that his Realm be riche in every Aſtate; for nothyng may make his People to ariſe, but lacke of Goods, or lacke of Juſtyce. But yet certeynly whan thay lack Goods thay will ariſe, ſayyng thay lack Juſtyce. Nevertheleſs if thay be not poer, thay will never aryſe, but if their Prince ſo leve Juſtice, that he gyve hymſelf al to Tyrannye.

Chap. XIII.

Onely lacke of Harte, and Cowardiſe, kepyn the Frenchemen from Ryſyng.

POVERTIE onely is not the Cauſe, why the Comons of Fraunce riſe not ageyn their Soveryng Lord; for there were never People in that Lond more pore, then wer in our Tyme, the Comons of the Cuntrey of Caux, which was almoſt deſerte for lack o Tyllars; as yt now wel apperith, by the new Huſbondrye that ys done ther; namely, in grobbyng and ſtockyng of Trees, Buſhes, and Grovys growyn, while we wer ther, Lords of the Countrey. And yet the foreſaid Comons of Caux made a marvelous grete Ryſyng, and toke our Townys, Caſtells, and Fortreſſes, and ſclewe our Captayns and Soldiers, at ſuch a time, whan we had but a fewe Men of War lyyng in that Contrey; which provith that it is Cowardiſe and lack of Hartes and Corage, that kepith the Frenchmen from ryſyng, and not Povertye; which Corage no Frenche Man hath like to the Engliſh Man. It hath ben often ſeen in Englond that three or four Theſes, for Povertie hath ſett upon ſeven or eight true Men, and robbyd them al. But it hath not ben ſeen in Fraunce, that ſeven or eight Theſes, have ben hardy to robbe three or four true Men. Wherfor it is right ſeld, that French Men be hangyd for Robberye, for that thay have no Hertys to do ſo terryble an Acte. There be therfor mo Men hangyd in Englond, in a Yere, for Robberye, and Manſlaughter, than ther be hangid in Fraunce, for ſuch Cauſe of Crime in ſeven Yers. There is no Man hangyd in Scotland in ſeven Yers together, for Robberye; and yet thay be often tymes hangyd for Lacenye, and Stelyng of Goods in the Abſence of the Owner therof: But their Harts ſerve them not to take a Mannys Goods, while he is preſent, and will defend it; which maner of takyng is callid Robberye. But the Engliſch Men be of another Corage; for if he be poer, and ſee another Man havyng Rycheſſe, which may be takyn from him by Might, he wol not ſpare to do ſo, but if, that poer Man be right true. Wherfor, it is not Povertie, but it is lacke of Harte and Cowardiſe, that kepyth the French Men from ryſyng.

Chap. XIV.

Hereafter is ſchewyd, why it nedith that ther be a Reſumpcin, and a Graunt of Goodſ, made to the Kyng.

THIS Serche which we now have made, for to underſtond hou harmefull it would be, to the Kyng, and to his Realme, if his Comons wer poer, hath ben a Digreſſion from the mater in which we labor; that is to ſay, for to underſtond hou the Kyng may beſt have ſufficient and perdurable Lyvelood, for the Suſtentation of his Aſtate. Wherfor it behovyth that we now reſort to the Poynte in the which we left, which, as I remember, was this. We found by grete Cauſys, that yt was nedefull, that al ſuch Gyfts as have ben made of the Kyngs Lyvelood inconſiderately, as not deſervyd, or abov the Merites of them that hath getyn them, were reformyd; ſo that they which have done Service, be not onrewardyd. Which thyng, as me thynkith, may not perfitly be done, without a general Reſumpcion, made by Acte of Parlement; and that ther be gevyn to the Kyng by the Auctorite of the ſame Parlement, a grete Subſydye, with which his Hyghneſs, with the Advyſe of his Counceile, may reward thoos that have deſervyd Rewards; and aught not therfor to have part of his Revenuz, by which his Aſtate muſt needs be mayntenyd; or aught not to have ſo moche of the Revenuz, as thay have now, or not ſoo grete Aſtate in the ſame; conſyderyng that al ſuch gevyng away of the Kyngs Lyvelood, is harmfull to all his Lyegemen, which ſchal therbye, as is before ſchewyd, be artyd to a new charge, for the Suſtentation of his Aſtate. But yet, or any ſuch Reſumpcion be made, it ſchal be good, that an honorable and notable Conceile be eſtabliſchid, by the Advyſe of which, al newe Gyftes and Rewards may be moderid and made, as if no ſuch Gyftes or Rewards had been made before this time. Providyd alway, that no Man be harmyd by reaſon of ſuch Reſumpcion, in the Arrearages of ſuch Lyvelood as he ſchal than have, which ſchuld ron after the Reſumpcion, and before the ſaid new Gyftes and Rewards. And when ſuch a Conceil is fully create and eſtabliſchid, hyt ſchal be good that all Supplications which ſchal be made to the Kyng, for any Gyft or Reward, be ſent to the ſame Counceile, and ther debatyd and delibered; firſt, whether the Suppliant have deſervyd ſuch Reward as he aſkyth: and if he have deſervyd ytt, yet it nedyth that it be deliberid, whether the Kyng may gyve ſuch Reward as he aſkyth, of his Revenuz, ſavyng to hymſelf ſuffycyent for the Suſtenaunce of hys Aſtate; or els ſuch gevyng war no Vertue, but rather a Spice of Prodigalitie, and as for ſo much, it were delapydacion of his Crowne. Wherfore no pryvate Perſon wol, by reaſon of Liberalite, or of Reward, to abate his own Lyvelood, as he may not kepe ſuch Aſtate as he dyd before. And truly it war better that a pryvate Perſon lackyd his Reward which he hath well deſervyd, than that by his Reward the Good Publike, and alſo the Lond were hurte. Wherfor to eſchewe theez two Harmes, hyt may than be advyſed by the Counceile, hou ſuch a Perſon may be rewarded with Office,

Money, Mariage, Fraunchiſe, Privylege, or ſuch other thyng, of whiche the Crowne hath grete Rycheſſe. And verely if this Order be kepte, the Kyng ſchal not be grevyd by Importunyte of Sewtars, nor thay ſchal by Importunyte, or Brochage, optayne any unreaſonable Deſires. O what Quyete ſchal growe to the Kyng by this Order! And in what reſt ſchal all his People lyve; havyng no Colour of grutchyng with ſuch as ſchal be aboute his Perſone, as thay were wonte to have, for the gyvyng away of his Lands, and for the Miſcouncelyng of hym in many other Cauſis; nor of Murmour ageyne the Kynges Perſon, for the Myſgovernyng of his Realme! For in this Counceile may be Determynyd, every Caſe of Deficulte, or the Kyng do any thyng therin. And the wiſe Man ſaith, "*ubi multa Concilia, ibi Salus.*" And truly ſuch a contynuall Counceile, may be well caulyd, *Multa Concilia*, for it ofte and every day Councelyth.

Chap. XV.

How the Kyngs Conceil, may be beſt Chojyn and Eſtabliſchyd.

THE Kyngs Counceile was wont to be choſyn of grete Princis, and of the gretteſt Lords both Spirituellis, and Temporallis of the Realme, and alſo of other Men that wer in grete Auctorite, and Offices. Which Lords and Officers, had nerchand as many matters of their own, to be treatid in the Counceile, as had the Kyng. Wherthoro v, whan thay came togeders, thay was ſo occupyyd with their own maters, and with the maters of their Kynne, Servaunts, and Tenaunts, that thay intendyd but lityll, and other while no thyng, to the Kyngs maters. And alſo ther war but fewe maters of the Kyngs, but if the ſame maters towchid alſo the ſaid Counceylors, their Coſyns, their Servaunts, Tenaunts, or ſuch other as they owyd Favor unto. And what lowar Man was than ſytting in that Counceile, that durſt ſay ageyn the Opynyoun of any of the grete Lords. And might not than Men make, by Meanys of Corrupcion, ſum of the Servaunts and Counceillours of ſome of the Lords, to move the Lords to Parcyalite, and to make them favourable and parcyal, as wer the ſame Servaunts, or the Parties that ſo movyd them. Than could no mater treatid in the Counceile be kepte Privy and Secrete. For the Lords oftyn tymes tould to their Counceylours, and Servaunts that had[1] fewyd to them for the maters, hou thay had ſped in them, and who was ageyn them. Hou may the Kyng be councelid, to reſtrayne gevyng away of his Lond, of gevyng of Offices, Corodyes, or Pencions of Abbeys, by ſuch gret Lords, to other Menys Servaunts, ſythen they moſt deſyer ſuch Gyfts for themſelf, and their Servaunts. Which thyngs conſyderyd, and alſo many other which ſchal be ſchewyd hereafter; hyt is thought good, that the Kyng had a Counceile choſyn and eſtabliſchid in the Fourme that followith, or in ſome other Fourme like thereunto. Firſt, that ther wer choſyn twelve Temporall Men, and twelve Spirituall Men of the wiſeſt and beſt diſpoſyd Men that can be found

[1] Stow's copy reads "that had ſerved them, and ſued to them."

in al the Parties of the Land ; and that they be ſworne to counceile the Kyng, after a Fourme to be devyſyd for their Othe. And in eſpecyall, that thay ſchal take no Fee, nor Clothyng, nor Rewarde of any Man, excepte only of the Kyng ; like as the Juſtices of the Kyngs Benche, and of the Common Place be ſworne, whan thay take their Offices. And that thees twenty-four Men be alway Counceillors, but if ther be any Defawte fownd in them, or that yt lyſt the Kyng, by the Advyſe of the more Partie of them, to chaunge any of them. And that every Yere be choſyn by the Kyng, four Lords Spiritual, and four Lords Temporal, to be for that Yere of the ſame Counceile, in like fourme as the ſaid twenty four ſchal be. And that they al have an Heede, or a cheffe Ruler, one of the ſaid twenty four and choſyn and appointyd by the Kyng, havyng his Office at the Kyngs Pleaſure ; which may then be callid, Capitalis Conciliarius. Hyt ſchal not be neceſſarye, that the twelve Spiritual Men of this Counceile, have ſo grete wags as the twelve Temporal Men, becauſe they ſchal not nede to kepe an Houſehold in their Countrey, while thay be abſent, as the Temporal Men muſt needs do, for their Wives and Children. By which Conſyderation the Spiritual Juges in the Court of Parlement of Paris, takyn but two hundred franks by the Yere, whereas the Temporall Juges thereof, takyn by the Yere three hundred Frankes. The ſaid eight Lords alſo, which, by reaſon of their Baronies and Aſtats, ben to the Kyng always, *Conſiliarii nati*, and therfor oughtyn to counceile him at al tymys whan he woll, nedyn not to have grete Wags for their Attendaunce to this Conceile, which ſhall laſt but for a Yere. For Temporal Men, which by reaſon of their Enheritaunce and Lyvelood, been made Scheriffs for a Yere, takyn of the Kyng lityl, and almoſt no thyng for their Service of that Yere. And though that Wages of the ſaid twenty four Counceilours, ſeme a new and a grete Charge to the Kyng ; yet whan it is conſiderid, hou grete Wages the grete Lords, and other Men, which wer of the Kyngs Counceile in tymes paſſid, toke for their Attendaunce therunto, which maner of Counceile, was nothyng ſo behovefull to the Kyng, and to his Realme, as this wol be, which Wags ſchal than forwith ceaſſe ; the Wages of the twenty four Counceillours ſchal appere no grete Charge to the Kyng. And I can ſuppoſe, that ſumme Kyngs before this tyme, have gevyn to ſum one Man that hath ſervyd hym, as mych Lyvelood yerely, as the ſaid Wages woll come unto. And if the ſame Wags be thought ſo grete Charge unto the Kyng, the foreſaid Counceillours may be in leſs Nombre, as to be ſixteen Counceillours of private Perſonys, with two Lords Spiritual, and two Lords Temporal ; ſo as than they be in all twenty Perſons. Thees Counceillours may continually, at ſuch Howres as ſchall be aſſigned to them, comewne and deliber upon the maters of Deficultie, that fallen to the Kyng ; and than upon the maters of the Polycie of the Realme : As hou the going out of the Money may be reſtraynyd, how Bullion may be brought into this Land, hou alſo, Plate, Jewels, and Money late borne oute, may be getyn ageyn, of which right wiſe Men may ſoon find the Meanys. And alſo hou the Pricys of Merchaundiſes, growyn in this Lond, may be holdyn up, and encreaſyd, and the Prycys of Merchaundiſe, brought into this Lond abatyd. Hou our Navye may be mayntenyd, and aug-

mentyd, and upon ſuch other Poinz of Polycie, to the gretteſt Profitt, and Encreaſe, that ever came to this Lond. Hou alſo the Lawys may be amendyd, in ſuch Thyngs as thay nede Reformation in. Wherthorough, the Parlements ſchall may do more good, in a Moneth, to the Amendment of the Lawe, than thay may do in a Yere, if the Amendament therof be not debatid, and by ſuch Counceille rypyd to their Hands. Ther may be of this Counceile, whan thay liſte to come thereunto, or that thay be deſyryd by the ſaid Counceilours, the gretteſt Officers of the Land, as Chauncelor, Treſorar, and Pryvye Seale, of which the Chancelor, whan he is preſent, may be Hye Preſydent, and have the ſupreme Rule of al the Counceile. Alſo the Juges, and Barons of th' Eſcheker, the Clerk of the Rollis, and ſuch Lords, as the forſaid Counceilors woll deſyer to be with them, for Matters of grete diffyculties, may be of this Counceile, whan they be deſyryd, and els not. All other maters which ſchal conſerne this Counceile, as whan a Counceilor dyyth, hou a new Counceylor ſchal be choſyn, hou many howrs of the day this Counceil ſchal ſyt, whan thay ſchal have any Vacation, hou long any of them may be abſent, hou he ſchal have his leve and licence, with al other Articles, neceſſary for the Demeanyng and Rule of this Counceile, may be conceyvyd by leyſure, and put in a Boke, and that Boke kept in this Counceile, as a Regiſtre, or an Ordynal, hou thay ſchal do, and be orderyd in every thyng.

Chap. XVI.

How the Romaynes proſperyd, whiles they had a grete Counceyle.

THE Romaynes, whill their Counceil callid the Senate was grete, gate, thorowe the Wiſdome of that Conceile, the Lordſchip of the grete Parte of the Worlde. And afterwards Julyus the firſt Emperor, counceilid by the ſame Senate, gate the Monarchie, nerehand of all the World. Wherethorow Octavyan, theyr ſecund Emperor, comaundyd al the World to be diſcrivyd, as ſubgett unto hym. But after this, whan yll diſpoſyd Emperours, as Nero, Domycian, and other had ſclayn grete parte of the Senatours, and dyſpyſyd the Conceile of the Senate, th'aſtate of the Romayns, and of their Emperours, began to fall downe, and hath fallyn away ſithen, unto ſuch decay, that now the Lordſchips of th'Emperour be not ſo grete, as the Lordſchips of ſome Kyng, which, while the Senate was hole, was ſubgett to the Emperour; by which Enſample it is thought, that if the Kyng have ſuch a Conceile as is before eſpecyfyed, his Land ſchal not only be riche, and welthy, as were the Romayns, but alſo his Hyghneſs ſchal be myghty, and of Power to ſubdue his Ennymyes, and al other that he ſchal lyſte to reygne upon. Of ſuch Enſamples many of the Poke of Cronycles be full. But in eſpecial the Cronycles of the Lacedemeneys, and of Athenyences, which while they proſperid, were beſt concelid, and moſt did, after Conceile, of any People of the World, except the Romanys. But whan thay latte ſuch Conceile, thay fel into non Power and Povertie; as of the Cyte of Athenes hyt may well appere, by that it is now but a Poer Vyllage, and ſumtyme was the moſt worſchipful Cyte of Grece.

Chap. XVII.

Here followen Advertiſements, for the gevyng of the Kyngs Offyces.

YF yt would like the Kyng to gyve non Office, unto the tyme that hys Entent therin be communed with his Counceile, and their Opynyoun by his Highneſſe underſtoud in the ſame, he ſchal ſo reward his Servaunts with Offices, that ther ſchal be lytill nede, to gyve them much of hys Lyvelood, and his Offices ſchal than be gevyn to ſuch, as ſchal only ſerve hymſelf. Wherthorough, he ſchal than have a gretter might, and a Garde of his Officers, whan he lyſte call them, than he hath now of all his other feed Men under the Aſtate of Lords, and other the Nobles. For the Might of the Land, after the Myght of the gretteſt Lords, ſtondith moſt in the Kyngs Officers. For thay may beſt rule the Cuntreys, where their Offices ben, which is in every parte of this Lond; and a mean Bayliffe may do more, in his Bayly-Weke, than any Man of his Degree, dwelling within his Office. Some Foreſter of the Kyngs, that hath none other Lyvelood, may bring moo Men to the Feld well arrayed, and namely for ſchoting, than may ſum Knight, or ſum Eſquier,[1] of right grete Lyvelood, dwellyng by him, and having non Office. What than may grete Officers do; as Stewards of grete Lordſchippis, Receyvers, Conſtables of Caſtellis, Maſter Foreſters, and ſuch other Officers; beſides the High Officers, as Juſtices of Foreſts, Juſtices and Chamberleyns of Cuntreis, the Warden of the Ports, and ſuch other? For ſoth it is not lightly eſtemable, what Might the King may have of his Officers, yf every of them had but one Office, and ſerved non other Man but the Kyng. Now it is eaſye to be eſteemyd hou many Men may be rewardyd with Office, and hou gretely yf thay be dyſcretely gevyn. The Kyng gevyth moo than a thouſand Offices, beſyds thoos that my Lord Prince gevith, of which I rekyn the Officers, as the Kyngs Officers. Of thees Officers ſum may deſpend by the Yere, by Reaſon of his Office, two hundred pounds, ſome one hundred pounds, ſome forty pounds, ſome fifty Marks, and ſo downward. So as the leſte of them, though he be but a Parker, takyng but two Pens by the Day, yet he hath by the Yere forty ſhillings and ten pence, beſide his Dwellyng yn the Lodge, his Fewell, his Cowe for his Mylk, and ſuch other thyngs goyng about hym,[2] (beſide Rewards) as profitable as would be fyve Pounds of Rent or Fee yerely, which is a fair Lyvyng for a Yeoman. Hou many Men then of every Aſtate, and of every Degree, and hou gretely may the Kyng reward with Officys, without gyvyng away of his Lyvelood. For ſoth the gretteſt Lord's Lyvelood in Englond may not ſuffice to reward ſo many Men, though he would departe yt every Dele[3] among his Servaunts. Nor two of the gretteſt Lords in Englond may make ſo grete a Might as the King may have only of his Officers, if they were holy and onely his Servaunts, and that every of them

[1] Stow's copy adds, "or gentlemen."

[2] Lambeth and Stow's MSS. read, after "goyng about him," "and the fees for his office, ſo as that office is to him alſo profitable as would be fyve Pounds."

[3] i.e. every part, all.

had but one Office. To this fayen ſuch Lords and other Men, ſuch as axen of the Kyng, Offices for their Servaunts, that they and all their Servants ſchal always ſerve the Kyng, and his Officers ſchal do hym the better Service, by Reaſon thay be in their Service. For they woll help them to do ſo, and ſuffre non other in their Company, but ſuch as woll do ſoo. Wherto it may be ſaid, that yt ys true that they ſchal do the Kyng Service while thay be in their Company; but ſo ſchulde they have done, though the Kyng had never made them his Officers. Wherfor the Kyng ſchal not be the better ſervyd, that he hath gevyn his Office to their Servaunts, but rather worſe. For, as our Lord ſaid, "*Nemo poteſt duobus Dominis ſervire.*" For ſo the Kyng ſchal leſe[1] the Officers for any ſinguler Service he ſchal have of them, or that the ſame Officers ſchal thynk themſelf beholdyng to the Kyng for their Offices, which his Highneſs hath gevyn them at the Contemplation and Requeſte of their Maſters; and for no Reward of any Service that they have done or ſchal do unto hymſelf. By Conſideration wherof their old Maſters ſchal be better ſervyd by them than thay were before; and the more myghty in their Cuntreys to do what them liſte; and the Kyng in leſſe might, and have the fewer Officers to repreſſe them whan thay do amyſſe. And this hath cauſid many Men to be ſuch Broggars[2] and Sucours[3] to the Kyng, for to have his Offices in their Cuntreyys to themſelf, and to their Men, that almoſt no Man in ſome Cuntreyys durſt take an Office of the Kyng, but he fyrſt had the good Wil of ſuch Broggars, and Ingrocers of Offices.[4] For, if he did not ſoo, he ſchuld not after that tyme have Peace in his Cuntrey; whereof hath comyn and growyn, many grete Trobills and Debats, in dyvers Cuntreyys in Englond. Which Matters thorowly conſydered, yt ſemyth verely good that no Man have any Office of the Kyngs Gyfte, but that he be firſt ſworon, that he is Servaunt to non other Man, nor woll ſerve any other Man, or take his Clothyng or Fee while he ſervith the Kyng. And that no Man have moo Offices than one, excepte that the Kyngs Brethren may have two Offices. And that ſuch Men as ſerve the Kyng aboute his Perſone, or in his Conceile, may have in their Cuntreys a Parkerſchip, or Foreſt, for their Diſporte whan they come home, or ſuch another Office as thay may well kepe by their Deputyes.

Chap. XVIII.

Advertſyements hou Corodies, and Pencions may beſt be gevyn.

AND if it will like the Kyng to gyve no Corodye nor Pencion, which he hath by Right of his Crown, of every Abbey, Priorye, and other Houſes fowndyd upon Hoſpitalite, by any of his Progenytours, unto the tyme that his Entent therin be communyd and delyveryd with his foreſaid Counceile, and that his Highneſs have under-

[1] i.e. loſe.

[2] i.e. (probably), brokers.

[3] "Suttars" in Stow's copy, meaning ſuitors.

[4] Stow's copy adds, "of the kinge."

ſtoud their Opynyoun in the ſame. Than ſhall Men of his Houſhoulde be rewardyd with Corodyes, and have honeſte Suſtenaunce in their olde Dayys, whan they may no longer ſerve; and the Clerks of his Chapell that have Wifes, or be not avaunſyd, be rewardyd with Penſions, without grete abatyng of the Kyngs Revenues, for their Rewards or Suſtenaunceys; for ſuch Corodyes and Penſions were fyrſt ordeynyd, and gyvyn to the Kyng, for the ſame Entent. But now of late tyme, other Men than the Kyngs Servaunts hath aſkyd them, and by importune Sewte, have gettyn grete parte of them, to the Kyngs grete Harme, and Hurte of his ſaid Servaunts. Which by the Cauſe therof lyvyn in the gretter Penurye, and in none Sewertie of their Suſtenaunce in tyme comyng, whan they ſhall not may do Servyces.[1]

Chap. XIX.

How grete Goode wyll growe, of the forme[2] endowyng of the Crowne.

AND whan the Kyng, by the meanys aforeſaid or otherwiſe, hath getyn ageyn his Lyvelood, yf than yt woll like his moſt noble Grace to eſtabliſch, and as who ſayth, Amortyſe the ſame Lyvelood to his Crowne, ſo as it may never be alienyd therfro, without Aſſent of his Parlement, which than would be as a new Foundation of the Crowne, he ſchal be therby the gretteſt Fownder of the Worlde. For theras other Kyngs have fowndyd Byſchopriches, Abbeys, and other Houſys of Religioun, the Kyng ſchal then have fowndyd a hole Realme, and endowyd yt with grete Poſſeſſions, and better than ever was any Realme in Cryſtendome. This maner of Fundation may not be ageyn the Kyngs Prærogatiff, or his Libertie, no more than the Fundation of an Abbay, for whiche he may take no Parte of the Poſſeſſions, which he hath ons gevyn them, without th'aſſent of their Covent. But this maner of Endowment of his Corowne, ſchal be to the Kyng a gretter Prærogatiff, in that he hath than enryched his Corowne with ſuch Riches and Poſſeſſions, as never Kyng ſchal may take from yt, without th'Aſſent of his hole Realme. Nor this may be to the Hurt of the Prærogatife or Power of his Succeſſors; for, as it is ſchewyd before, yt is no Prerogatiff or Power to may leeſe any Good, or to may waſte, or or put it awaye. For all ſuch thyngs comith of Impotencye, as doth Power to be ſyke or to wax old. And truly if the Kyng do this, he ſchal do thereby dayly more Almes, than ſchal be done in all the Foundations that ever were in Englond. For every Man of the Land ſchal, by this Foundation, every day be the meryar, the fewrer, fare the better in his Body, and in all his Goods, as every wiſe Man may well conceyve. The Fundations[3] of Abbeys, of Hoſpytallis, and of ſuch other Houſys, ar no thyng in comparyſon hereof: For this ſchal be a College in which ſchal ſyng and pray for evermore al the Men of Englond,

[1] Here the Lambeth MS. ends. [2] i. e. firm. [3] Here the Laud MS. ends abruptly.

Spiritual and Temporal, and their Song ſchal be ſuch amonges other Antemes: Bleſſyd be our Lord God, that hath ſent[1] Kyng Edward the IVth to reygne upon us. He hath done more for us than ever dyd Kyng of Englond, or might have done before hym. The Harmes that hath fallyn in gettyng of his Realme, ben now by hym turnyd into our aller Good and Profit. We ſchal now enjoye our own Goods, and lyve under Juſtice, which we have not done of long time, God knowyth. Wherfor of his Almes yt ys that we have all that is our own. And therfor God continue his Grace and Perſone in long Lyffe with Increſe, in Honour and Magnificence, to his Hart's Deſyer, and Welth of this his Realme.

Chap. XX.

Advertiſement for making of Patents of Gyfts.

IT is not ment by the Premyſſys, but that the Kyng without the Aſſent of hys Parleament ſchal gyve to ſuch as do his Grace ſinguler Service, Land for Terme of their Lyfys. For therby his Corowne may not be Dyſheryted; for that Land will ſone come ageyn. But than it were good that the ſame Land be no more after gevyn; for els Importune Sutours woll gape upon ſuch Reverſions, and often tymes axe them or thay be fallyn. And when they be fallyn, the Kyng ſchal have no Reſte with ſuch Sutours, unto the tyme his Highneſſe have gevyn ageyn all ſuch Lands as he hath ons gevyn. And by Contenuance therof, that Lond ſchal not ſerve hym but for Gyftys, as done Offices, Corodyes, and Penſyons. And truly yt were good that of all the Kyngs Gyftys, his Patents made mencyoun that they were paſſyd, *de Aviſamento Concilii ſui*, namely, for a Yere or two. For if ſuch an Order be kepte, Men wil not be haſtye to axe Rewards, but if thay be of right good Merits, and many Men will be of the better Governaunce, for the Kyngs Counceile ſchuld deme them worthye to be rewardyd. And thay that optayne not that Deſyer ſchal have than lityll Colour of Grutche, conſyderyng that they lacke yt by the Dyſcrecyoun of the Kyngs Counceyle. And the Kyng ſchal have hereby grete Reſte and Quietneſſe, and be well defendyd ageyn ſuch Importune Sutours. And yet his Grace may leve this Order whan hym likyth. And **God ſave the Kyng.**

[1] Stow's copy reads "Henry the VIth."

they that opteyne not that they desire schal have
than litill colour of grutche, consideryng that
they lakk yt by the discrecoune of the kynges
counseyle / And the kyng schal have hereby
grete reste and quyetnes / And be wel defendyd
ageyn such importune sutours / And yett his
grace may rewarde theym whan hym likyth
And God save the kyng /

Explicit liber compilat[us] & fact[us] per Johem ffortescue
militem quondam capitalem Justic[iarium] Anglie / et
et hic [illegible] script[us] manu p[ro]pria mei /
Adriani ffortescu militis / 1532 /

Loyall ffortz fé pensee

EXAMPLE WHAT GOOD COUNSAYLE HELPITHE AND ADVANTAGETHE, AND OF THE CONTRARY WHAT FOLOWETH.

Secundum SIR JOHN FORTISCWE, Knight,

AND LORD CHIEF JUSTICE OF ENGLAND.

WHAT good welthe and profperitie fhuld grow to the Realme of England yf fuche a counfeyle be once parfectly ftablifhed, and the Kynge guided thereby.

The Roymanes which by wifdome and manhode gat the lordfhipe and monarchye of the worlde, were firft governed by Kyngs; but when the Kyngs threughe infolence, folowinge theyr paffyons, lefte the counfeyll of the fenate the Romayns rofe upon them and put away theyre Kyngs for evarmore. And then they were ruled by the fenators, and by confuls politikly many yeres. By whofe wifdom they gat the lordfhipe of greate parte of the worlde. But after theyr greate welthe by diviſyon that fell betwene the confuls for lake of one hed, they had amongft them civile battayles where in at fome one debate were flayne and exiled of them felfe more then eighty thoufand. And after that they were governed by one head called an emperour, which ufinge in all his rule the counfeyll of the fenate, gat the monarche of the worlde, fo as at Chriftis birthe th' emperour comaunded the whole worlde to be diſcribed as fubjects unto hym. Which lordfhipe and monarchie th'emperour kepte all the while they were ruled by the counfeyle of the fenate; but after that, when th'emperour lefte the counfeyle of the fenate, and fome of them had as nere[1] dominacion, and other had fleyne greate party of the fenators, and were ruled by theyr private counfeylers, the ftate of th'emperoure fell in dekeye, and theyr lordfhipe waxe alway fythen laffe and laffe. So as now th'emperoure is not of moche myght as is one of the Kyngs which fome tyme were his fubjects.

[1] Sic in MS., poſſibly an error for "mere," i. e. entire, abſolute.

We alſo Englyſchemen, whoſe Kyngs ſome tyme were counſeled by ſadd and well choſen counſeylers bett the myghtyeſt Kyngs of the worlde. But ſythen our Kyngs have bene ruled by private counſeylers, ſuche as have offered theyr ſervice and counſeyle, and were not choſen therto, we have not be able to kepe our owne lyvelode, nor to wixen[1] them that have take it from us. And that hathe bene moaſte for povertye and lake of good. But we have had by that occaſyon civill werres amongſte us ſelfe as had the Romayns when they had not one hede but many governours. And our realme is falln thereby in dekey and povertie, as was the emprere when th'emperour lefte the counſeyle of the ſenate. But it may not be doubted that yf our Kyngs be counſeyled by ſuche a wyſe ſtablyſhed counſeyle as is before devyſed, and do there aftar as did the firſt emperoure that gat the monarche of the worlde, we ſhulde firſte have unite and pax within our land, riches and proſperite, and be myghtieſt and moaſte welthy realme of the worlde.

[1] i. e. to weary

THE TWENTY-TWO RIGHTWISNESSES BELONGYNGE TO A KYNGE.

HESE bene the xxii rightouſneſſes that avery Kynge muſt have, uſe, and holde in hym ſelfe; for they maken the welfare of a realme, and leden a Kynge to the realme of heven.

Holy Writt ſaythe thus: Wo is to that lande that hathe a Kynge that is a childe of evill maners, and whoſe princes eten erlye out of tyme. Certes theſe wicked men that rule not realmes after the lawe of God, they ſoffar many adverſities, as no wondar is. For many tymes therefore ſythen peax is broken, and diſſentions bene reyſed of the ſame realme withinforthe,[1] and fructes of londs bene made leſſe, and ſervices of ſubjectes bene ofte letted, and many dyvars ſorrowes diſtroyethe proſperities of the ſame realme, and bringeth in morninge of deathe both of dere friends and children, and affaylinge of enemyes, waſtinge theyr contryes in eche feyde. And thes letten plenty in moaſte of realmes, and cauſen ſorrowes of the fee, and ſome tyme ſtrokis of flouds deſtroyenge cornes and bloſſomes of frutes on trees, and this before all other things.

Unrightwyſneſſe of a Kynge fadethe the face of a worldly realme, and lettithe his children and kenred to hold the heretage of the realme aftar hym. Hereof an inſomple. For the ſyne of Salamon our Lord berefte his children the realme of Iſraell; and for the rightwiſneſs of King Davyd, God lefte evar in Jherufalem a lantarne of his ſede, as the ſtorye of Kyngs tellethe. Here may ye undarſtond well how moche that the rightwiſneſſe of a Kynge is worth unto this worlde. For it is peax of his ſubjects, and ſurty of the land, good kepinge and ſtrengthenynge of the people, helthe of ſorrows, joye of his liegemen, temperour of the ayre, clerenes of the ſea, plentiouſnes of the erthe, ſolace of pore men, heritage of his children, and to hymſelfe hope of bliſſe to come. But natheleſſe wete the Kynge that as he is firſt put in the ſeate above othar men, ſo yf he do unrightfully he ſhal be the firſt in payne. For all the ſynfull men that he hathe undar hym ſhall he have his payne above them.

---

[1] i.e. internally.

The xxii rightwiſneſſes belongynge to a Kynge.

The firſt, is to oppreſe no man unrightfully by his greate might.

The ſecond, to deme rightwyſly betwixt man and man without favoure or hate of perſons.

The third, to defend aliens, widowes, fatherles, and motherleſſe children.[1]

The fowerth, to chaſtiſe theves in his realme without favour of partialitie.

The fift, to puniſh ſharpelie adventerers.

The ſixt, to make wicked men not great of power nor dignitie.

The ſeventh, to eſchew men vicious liars or jangelers.

The eighth, to leſſe wicked men, and to put them out of his land.

The ninth, to ſuffer noe ſlears of men, ne falſe jurors in his realme.

The tenth, to defend the Church in all God's lawes.

The eleventh, to feed poore men with almeſſe.

The twelvth, to ordaine juſt and true men upon nedes of the realme.

The thirteenth, to have his counſeylors of olde men wiſe and ſober.

The fourteenth, to give noe credence to men of wrong beleve, ne ſuffer no wiches

The fifteenth, not to veng[2] ſuddenlie or haſtelie his yre or his inordinate will.

The ſixteenth, to defend his land ryghtfullie againſt th'adverſaries therof.

The ſeventeenth, to truſt and beleve only in God.

The eighteenth, to ſet not to high his heart by liking happes and fortunes of the worlde.

The nineteenth, to ſuffer pacientlie all adverſities and troubles that fallen to him.

The twentieth, not to ſuffer his own children to doe wrong againſt God, and man.

The twenty-firſt, to bee devoute in his prayers certaine houres.

The twenty-ſecond, is not to ete ne drinke but in convenable times.

[1] From this line to the end, the transcript is in a different handwriting.

[2] i.e. perhaps avenge, or in error for "vent."

A

DIALOGUE BETWEEN

UNDERSTANDING AND FAITH.

BY SIR JOHN FORTESCUE, KNIGHT.

THE following pages are printed from a tranſcript of an old manuſcript in the Cotton Collection,[1] taken for the purpoſe by Mr. Richard Sims; that copy of the Dialogue being the only one which a careful inquiry into the contents of every public and private collection of MSS. in this country, that could be reached, has brought to light. It is now printed for the firſt time. Although the manuſcript was ſeverely injured by the fire in the Cotton Library of the 23rd of October, 1731, its contents were not much curtailed; a compariſon of the ſheets which are preſerved with the number of folios mentioned in an early liſt of Forteſcue's works,[2] ſhowing that, with the exception of ſmall portions burnt off at the beginning and end, and of a few gaps of not many words each in the body of the work, we have all that was originally written. We are told that the MS. was on ſix leaves folio, and the margins of the printed pages ſhow that ſix leaves ſtill remain. The following is the full title given in the liſt referred to:—

"A Dialogue between Underſtanding and Faith, ſix leaves folio, written by Sir John Forteſcue in the time of King Henry the Sixth, *in quo oſtendit quibus modis et rationibus Deus ſæpe caſtigat et punit Reges per eos qui magis contra illum deliquerunt.*"

As to the time of the compoſition of the tract, ſome expreſſions near the end go directly to ſhow that it was written during the civil wars of Henry VI.'s reign; while the writer's reflections throughout are ſuch as would naturally ſuggeſt themſelves to a thoughtful perſon in a time of civil commotions, when the foundations of the State were overthrown. The aſpect of public affairs at this time to one filled as he was with veneration for law and a ſettled courſe of government, muſt have been eſpecially diſtreſſing, well calculated to

[1] Vitellius E. X., fol. 176.

[2] Smith's Catalogue of the Cotton Library, made before the fire.

throw a religious mind for conſolation upon Faith in an unſeen, though all-wiſe, Director of events, whoſe mode of action Underſtanding could not comprehend.

It will be ſeen that, at all events, the firſt queſtion propounded by "Underſtanding" is wanting. It muſt have been, however, ſomewhat to the following effect:

"If Kings were eſtabliſhed by God, why doth he allow the ſame to be deprived of their Lordſhips?"

The words between brackets have been inſerted by the editor, upon conjecture, but only when there did not appear to be much room left for choice or miſtake.

Feyth.

. . . . . .

IF we beleve that kyngs] were ſtabliſhed by the [lorde], we ſhulde as wele beleve that he which made them maynteneth hem, or if he hymſelf lyſte, can unmake them; for al maner of thyngs have of oon maner cauſe their beyng and their duryng. But who that wolde ſey that lordeſhippe gotyn by violence with the myghty men of the pore men, ſhulde long ſtonde without ſubverſion? It ſhulde ſeme though it turned, it were no marveile, for it is founded uppon a wykked begynnyng, and rather it ought to be called tyrannye than Reigne. Wherfor let us beleve that Saul was the firſt kyng which God firſt ſtabliſhed, to whom[1] he gave the ſeptre of power, and the unccion of grace for the governnance of his Reame, from[2] his heires, and chaunged hit unto David, which regned over the people of Iſraell vertuouſly, and left hit afterwards to Salomon his ſon, which held hit peaſibly after his deceſſe unto the tyme that fleſhly delites perverted his wiſdom; for as ſoone as he enclyned from the lawe of God, and ſerved his owne pleaſyres, forthwith God arreiſed ayenſt hym newe enemyes. Yet natwithſtondyng at that tyme the opyn werre was nat reiſed ayenſt hym, for the merites of his fadre, but the dyvyne furour turned uppon his ſon Roboam, and toke away the tenth part of his lordeſhip, the herts, and the obeiſaunce of his ſubgetts; for he diſdayned ayenſt the counſeil of his wiſe people, and diſpreiſed hit, and folowed the apetyte of his deſires, and the opynyon of fooles which were but yong and of no greet underſtandyng. f. 176.

O ye erthely kyngs which ſytten in your tremblyng cheires, lerne your leſſon of the Kyng of heven which [alway is] treue, of which the Reame may never chaunge, nor the [lawe] therof may never be ageynſaid. But your Realme faileth with your life, and his Reame lordſhippeth over the lyf and deth. Ye Regne over the ſubgetts and bondemen, and he regneth and commaundeth over the kyngs. Ye make in the worlde lawes tranſi-

[1] i. e. as regards whom.

[2] i. e. away from.

tories, but his perpetuel lawe onbyndeth your lawes, and byndeth your powers, lyfteth up your yghen,[1] and maketh your herts to lerne of his doctrine; which [is that] by hym allone the kyngs may reigne; feyng the firſt kyng that he made and ſtabliſhed he toke awey the ſeptre, and leſſed th'obeyſaunce of the thirde, and withdrewe his ſubjetts, in token that your Regne here levethe as nothyng ellys but a commyſſion revocable atte pleaſir and counſeil of above. And to th'entent that the worſhip of ther charge ſhulde make them nat to myſknowe hymſelf, he punyſshed the firſt of his makyng after the offenſe that he hadde doon, for the delaracion of the firſt Inſtitucion of Reames uppon the deue condicion of kyngs—that be unhappy; for the Crowne is ful hevy to ſuche kyngs as ſlepyn in vayne glory, and maken themſelf drengen in pride, as when they myſknowledge their humanyte, and uſurpe uppon the dyvine power, for the fere that his people and ſubgeits have of hym, to forgete the drede which he ſhulde by reaſon owe to almighty God. And thus they take uppon them ſuche honor that they ne may never gete nor kepe. At ende ſuche maken of the Roial ſee a chaire of peſtilence, and the pride of them enhaunſyng is the ſentence of their ruyn; for ſuche roial feiges ſynken undre the man that is overcharged with ſynne, and his chaire reverteth uppon hym the forer, foraſmuche as the dedes whiche longe to the Crowne be na wele ſupported and mayntened accordyng to th'office. Enſample of Nabuchadnazzar
f. 177. . . . . .[2] thenne ſoone after the have the greet fall, and power that b evill gotyn draweth the geter to myſeaſe and parell; for as they come ſo they go, and levetl hymſelf or his heires in ſhame and in povertee.

Undreſtondyng.

The ſtate of Inyquytees, let them bee where as God, and fortune will, for of their l ur and payne is but litle harme, but uppon th'affliccion of rightwiſſe men I wolde fayne be anſuered.

Feith.

Canſt thou, as thou ſuppoſeſt, knowe the juſt man from the ſynner, and be aſcerteyned of the ſecret thoughtes which God hath reſerved to hymſelf? For the punyſhiment of men be nat alweys doon at tyme of treſpas; but our lorde often tyme whenne a man dothe good dedes, taketh vengeance uppon the myſdedes which wer paſſed and forgeten. Man ought to be redy to receive the grace of . . . of pennance, and God chaſtiſeth hym ſonneſt whome he fyndeth . . . diſpoſed to receave hit. Hys wiſdom and his juſtice is kept ſo long thorowe his greet pite and grace, that he tarieth long to chaſtiſe the evill folke, truſtyng of their amendement. And on the other part he will rewarde ye [goo]d for to prove their

[1] i. e. eyes. [2] There is here a gap in the MS. but apparently of a few lines only.

ſuffraunce and to encreaſe their perfeccion of their meryte; [he] recompenſeth his abidyng by augmentacion of grace, or ellys by decrement of payne. The phiſiſian geveth nat the ſeke man to drinke after the apetite of his thirſt, but tarieth and abideth a dew houre for the profite of his welfare. And though ſo be that the pacient grugge and compleyn uppon his phiſiſian for becauſe he leveth him ſwetyng in greet [payne] of the hete, yet for al that the wiſe phiſiſian wil nat graunt all his requeſt; for ſuche a compaſſion reſembleth rather to cruelte than to pyte.

And this enſample lereth[1] Seynt Jerome through [reading] of the prophecy of Abacuc, f. 177 b. which in ſtrivyng with the haſty deſires contrary to the tariyng and longe ſuffrance of the jugement of God, formed this queſtion oftyn tymes to God contrary to his owne helthe. For he which hathe yoven[2] tyme and place, and knoweth whan his helpe and his ſocor, or his chaſtiſyngs be mooſt to our helthe, deputeth hem nat at our election nor in the houre of our deſire, but to his reſonable will and to the profite of our perfeccion. Wherfor abaiſhe the no more though thou ſe hym which thou takeſt for Juſt ſuffre payne, for thou knoweſt nat what ſpiritual wynnyng reboundeth from theis temporal hurts, nor thou knoweſt nat alſo what ſynne is hidde in ſuche as thou reputeſt to be Juſt.

Undreſtondyng.

Salamon gave us for a rule that men have turment by the ſame thyng of which they did the ſynne. Thenne howe may it be that ſuche folkes be punyſshed that never bare office, nor never were called to counſeil for the commune wele?

Feith.

Thyne errour is founded uppon ignorance, for thou weneſt that he allone doth offence to God, that opynly putteth ſynne in uſe. Nay certeynly it goth a nother wiſe than ſo, for the, or ſuche as have power to reſiſt and do it nat, and ſuche as be in the fortune of ſynne, and ſerve the bruyte and folowe the vanytees therof, been partyners and nouriſhers of ſynne, and geve a boldeneſſe for men to do evill and to contynew in the ſame.

Ha! Undreſtondyng, if thoue knoweſt them that ſo long tyme have dyſſymyled the inyquytees the . . . . . f. 178
. . . . . [Nabuchadnazzar was ſo lyfted up with] pride, that he made hymſelfe to be worſhipped as God; but our lorde brought hym ſo lowe that he fedde hymſelf with beeſts. Knowe for certeyn that the yeys of God waken over the ſynnes of Reames for to chaſtiſe them or ſubverte them. Art thou nat remembred howe it is writen that lakke of Juſtice and untrewe dedys maken Reames redy to be chaunged?

[1] lereth, i.e. teacheth. [2] yoven, i.e. goven, given. Several lines missing.

Which is oftentymes ſeen, and bringeth them lowe thorowe the greet weight of ſynne. For ſynne is ſo fowle, and of ſo fallyng a condicion, that it draweth unto hym myſery and ſ[orrowe]; and his delite is alwey accompanyed with unhappyneſſe, and purſeued with payne And ſo the dyvyne Juſtice which is rightfull may nat ſuffre ſuche kyngs to regne over the people, foraſmoche as they be ſervants unto ſynne, and therfor almighty God tranſporteth the Reames from hande to hande.

Undreſtondyng.

Whan our lorde liſt to punyſhe men for ſynne, what is the cauſe that he diverſe tymes putteth hem in the hands of gretter ſynners than they be?

Feyth.

f. 178 b. In that is ſhewed his Juſtice for the more turment of the ſynner; for like as by ſynne he is reiſed up ayenſt the meke[1] . . . . . and hevynge lordeſhip of almighty God, ſoon is he caſt doune undre the hard tyrannye of ſynne. For he that will put al erthely thyngs undre hym, he muſt firſt ſubmytte hymſelf to God. And in contrary wiſe, when man myſtaketh hymſelf ayenſt God it maketh man ſubget and bonde to al thyngs. For as oon iren fyleth another, ſo a ſynner chaſtiſeth his ſemblable and becomethe an Inſtrument of the dyvyne Juſtice. The fyle wereth, and after that is leide aſyde as a thyng nat profitable, yet through amendement of the maiſter werkman the yren is made able for to fyle, and ſo brought ageyn to profite. The fadre otherwile taketh the rodde to bete his childe, and in his betyng the rodde breketh, and after, whan he is appeſed, he taketh the rodde and caſteth hit in the fyre. So undre thys maner our lorde holdeth his chapitre and his reformacion; and who that wil nat lerne of his diſſyplyne may holde hymſelf cloſed from grace. The natural ſon is betyn of his fadre within the howſe when he treſpaſſeth, but the hired man is utterly put out of the hous withouten ſtroke. And who that redeth Iſaye may fynde enſample of theis wordes and noted in ſtory, howe the Reame of Aſſyriens was the ſkorge that God ordeyned for his children of Iſraell. Thanne afterward he brake the ſkorge and deſtroied the Reame of Aſſury, and chaunged that lordeſhip to the Perces and the Medes, and made Babyloyne unhabhitable, and delyvered Iſraell from ſervage, and ſette hym in libertee.

Undreſtondyng.

f. 179 b. Than, ſens it is ſo, that adverſite of Reames been execucions of divyne Jugements thorowe the myſknowlechyng of kyngs, [why doth God punyſhe] the pouer and lowe ſub-

[1] Three or four lines ſeem to be miſſing here in the MS.

... the prince & lowe subiectis
[li]ke other membres synne and why wil god put
... suche turmentis ouer the trubule of his labour

Feythe

Holy scripture witnesseth that for synnes of a kyng the people been oftyntymes punysshed and for the synnes of the people kyngis been deposed & put downe.

Understondyng

Theffecte of this I knowe by ensample, for when Dauid hadde synned many of his people died therfor, and on the other syde for theffensis of people Zedechias was punysshed by god that is to knowe he was taken wt Assyryens and his yen put out of his hede. Now wolde I fayne knowe the cause of these ij punyssions, which semeth to me shulde be a rygour in the dyvyne justice, or ellys it shulde seme that it were nat true that saith the sone shal nat bere [the i]niquite of the fadre, and that eche man shulde bere the peyse [o]f his owne fardell

Feythe.

The werkes of god ouercometh our jugementis and iugeth them and his infynyte power iustefieth all his werkes in [iug]yng them. for he is a justice of hym self, yet for the ouste [of th]e ignorance he lefte vs his wordes in holy scripture which [we] nat faile and by them wole understonde we may by his [ju]ge the stablisshynge of kyngis which is founded for

getts for other mennes ſynne? And why will God put uppon[1] newe turments ovir the travaile of ther labour?

Feythe.

Holy Scripture witneſſeth that for ſynnes of a Kyng the people been oftyntymes punyſshed, and for the ſynne of the people Kyngs been deprived and put downe.

Undreſtondyng.

Th'effecte of this I knowe by enſample; for when David hadde ſynned many of his people died therfor. And on the other ſyde, for th'offenſe of people Zedechias was punyſshed by God, that is to knowe, he was taken with Aſſyryens and his yen put out of his hede. Nowe wolde I fayne knowe the cauſe of theiſe two punyſſions which ſeeth to me ſhulde be in a rygour in the devyne Juſtice. Or ellys it ſhulde ſeme the text were nat true that ſeithe the ſonne ſhal nat bere inyquite of the fadre, and that every man ſhulde bere the poiſe of his owne fardell.

Feythe.

The werkes of God overcometh our jugements and jugeth them, and his Infynyte power Juſtefieth all his werkes in doyng hem; for he is a Juſtice of hym ſelf. Yet for the eaſe of our ignorance he left us his wordes in holy Scripture whiche may nat faile, and by them wele undreſtonde, we may by his worde juge the ſtabliſhyng of kyngs which is [f. 179. b] founded for occaſion of[2] ſynne in the people, [ellys it is] true we hadde no nede to fere lordeſhip. For, as the apoſtle wrote to the Romayns, the kyng is nat the fere of wele doers; but he is dredeful to them that doen a myſſe; and the lawe was not made for the rightwiſmen, but it was made for the ſynners. Alſo it muſt be undreſtonde that thorowe the importune requeſt of the people was graunted hem firſt a kyng. Yet our lorde ſent unto his people by Samuell and ſhewed them the corrupcions and the infeccion that the evill kyngs ſpredde amonge the people thorow their vicious enſample. And, natwithſtondynge that, yet wolde they nedes have a kyng. O lorde God howe that Reame ſhyneth bright when there regneth a vertuous and a Catholike kyng! Certeynly like as the fair ſonne that caſteth his bright bemes uppon the erthe, thorowe which is voided awey the derke myſtes, and maketh the day to ſhewe clere, ſo in like wiſe the rightwys kyng confoundeth and deſtroieth al maner of wikkedneſſe thorowe the foreſight of his wiſdom, and dreſſeth all maner thyng to honeſtee for the honor of his renown.

But O alas yn contrary wiſe, who that can ymagen and thenke the poiſon and the venym

[1] "Uppon" here ſignifies "in addition."

[2] i. e. *by occaſion of.*

the wykked and vicious kyng fowethe in his Reame! For the wykkedneſſe decendeth from the grete to the ſmale; thenne the people ſewen[1] the fortune, and lyven by the patron of their ſovereigne. The ſchrewde kyng [preſſeth] his ſubgetts [fore] and out of meſure; for loke where a prince is without wiſdom, then been the people without diſciplyne. For and a boke be falſely writen it ſhal make the reders, and they that write after that boke joyneth, fals uppon.[2] So then the kyng is the boke of the people wherein they lerne to lyve and

f. 180. amende their maners, but, and the . . . . . untruely wretyn. For the [humour] that deſcendeth from the hede chaufeth the liver, hit chargeth the hert, it filleth the ſtomak, it ſtoppeth the cuticles, and altereth all the body. Likewiſe the vices that rebounden uppon the ſubgettes parverteth the ordre, troubleth th'office, and empaireth the condicions of all the aſtates of his people. For the ſekeneſſe that cometh from the hede cauſeth al the membres to be troubled.

Nowe al kynges take hede to this, for, and they knewe that in her wykkedneſſe henge the ſynne of the people, they wolde enteerly kepe their dignyte above al other, and they wolde be vertuous above al other. Nowe here it foloweth whether the kynges were ſtabliſhed to th'occaſion of ſynne of the people and at their requeſt, and whether the ſubjettes dowen[3] the ſynne of kynges, thorowe the which hurt may come to either party. But he that mooſt ſynneth, either the kyng or the people, be mooſt worthy to bere the blame; and on that party ought ratheſt to turne the vengeance. For the nature of ſhrewde men is to be ſervant to payne and bounden to correccion. And ſens it is ſo that their evil ynclynacion may nat kepe hem in rule onleſſe than they have a kyng, it is reſon that the ſuffre the charge and the affliccions that growen out of the vices of kynges. And the kyng alſo ſhal bere th'offenſe of his people, foraſmoche as his diſſolucion of vices ys opened amonge hem, and thorowe the negligence that he doth nat uſe payne to enhaunce vertu and reprove myſdedes which be the begynnyng of their diſordenaunces. Wherfor princes ought to be greetly moved to dyſſyplyne, to good maners, and vertu, ſeeyng that ther goodneſſe may profite to all the people. On the other ſide their inyquyte may noye to every man. [Goo]d that is mooſt univerſal and comewne is mooſt excellent.

f. 180 b. And in contrary wiſe the evill more[4] . . . . . of dyſſyplyne ſheweth too contraries, and the wiſe[4] . . . . . To ſuche folkes ſhal be yeven right a ſharp and a harde Jugement, namely ſuche as ſate in the high ſeges. And they that be ſeke and pore ſhal have their payne made ſwete with mercy; but the greet ſhal fele the myght of ſtrong turmentes. O ye kyngs herkene what the greet Kyng hath ordeyned for you! He hath ordeigned for you honours and magnyficences, but loke ye love vertu, for

[1] "Sewen," i. e. follow.
[2] "Uppon" has here the force of also.
[3] i. e. fear.
[4] At theſe two places a few words have been burnt off at the ends of lines.

ye have them to th'entent that ye ſhulde ſerve hym with them; and if ye ſerve hym nat with them ye can nat kepe them. Certeynly vertu that cometh from heven where perdurable thyngs dwell, holdeth the grace and the ſemblaunce of the goodneſſe of her nativite, and therefore ſhe maketh the powers to endure, and ſuche as wil folowe her, maketh hem ſtedfaſtly abidyng in their ſuertee. But who that is born of this lowe fragilite undre the paſſion humayne, is variable and maketh his werkys that be nat durable, and draweth hem to the fall thorough the feble impotency of that they com from; for every thyng returneth ageyn to their principles, and who that wil nat begynne his werke uppon vertuous affeccion, nor conditheth hit by lyne and undre meſure, may wele be likened to hym that bildeth his houſe uppon a falſe foundement, and conditeth his werke in maner for to ſhewe but nat to endure. And what bewte apparant that the bildyng ſheweth, yet it wil enclyne to his firſt beyng, that is to ſay, fall unto ruyne. Remember theron the ſentences that thou ſeeſt in writyng, and ſuche thyngs alſo as thou haſt ſeen in thyne experience, and thou ſhalt ſe hem accorde in this behalfe. For the glory of evil princes and the reiſyng of their dignite is as the fire that is within flex or towe, which litle while dureth. For nowe a daies they wil uſurpe and take uppon them authorite and power not deu, and blynde them ſelf ſuche wiſe to the [end] of their fortunes, and be ſo ſtonyed yn the greet brute of [their] worldly worſhippes, that they may nat here the ſhe[1] . . . . . [Suche] an aſtate may nat ſtonde ferme, for thyng that lightly cometh, lightly goeth, and the trees that beren haſtely, both the frute of hem is leſſe, and alſo they dure nat ſo longe as they that have long attemperance and wele tyled, which receive their noriſhyng thorowe hete of the ſonne. Therfor thou ſeeſt but fewe or noon reigne long of ſuche as thorowe pride and ſynne avaunce hem ſelf to high governaunces; for as ſodeynly as they aryſe to the high pompes, as ſodeynly they fall from their aſtate, their name periſsheth, their good goth away, and their lynage falleth into diſheryteſon.[2] David diſſymyled nat the marveilous jugement whan he ſeide "I have ſeeid," quoth he, "the evil men reiſed on heith as the high ſedre, and whan I was paſt and comyng homward ageyn I ſawe neither rote ne braunche." Wherby thou mayiſt ſe that the greet Reames and myghty powers that been occupied unrightfully, and wrongfully conducted may never ſtonde ſtable nor acerteigned; but it draweth the kyng and the Reame to payne and to dethe which is the reward of ſynne, as ſeith ſeynt Paule. And their reward ought to be yeven after the qualite of their deſertes. The inyquite of a prince which is a publike perſone thorowe whoes dedes falleth oftetymes unyverſal ſlaundre and greet hurt to the people, cauſeth hym to have generalite of payne above all others.

O ye kynges that be cloſed in this lowe world, wheras almyghty God hath ſette bothe ende and terme which no man may paſſe, and your power may nat be ſtabliſshed on laſſe than God affirme hit, thorowe whoes handes ye muſt nedes paſſe, wherfor then do ye engroce

[1] Two or three words are wanting here.

[2] i. e. Diſinheritance. Halliwell, Arch. Dict.

up the greet hopes of theis wordely goodes unrightfully, to the greet noyaunce and trouble of the pore people, ſeying that ye be of ſuche a fede as muſt nedes paſſe awaye, and your power ſhall be alle to broken, and fewe teres or noon ſhal be ſhedde for you on leſſe that your hert be fermely ſette on God which byndeth and unbyndeth; for after your paſſage ye muſt make acompte, therfor it is neceſſary that reaſon paſſe your deſires ſuche as may be confermed to Godde's wille.

Underſtondyng.

f. 181 b. [Good] doctrine and depe Inſtruccion may be gadered out of thy wordes. But yet I have a ſcrupil uppon that God punyſsheth the Juſt and true men with the ſynners, and putteth the innocentes and [evill] as all oon. Alas howe many juſt and peaſible creatures have borne the payne and angwiſsh of this werre! Alſo howe many men of honeſt livyng have ſuffred dethe! And moche good truly gotyn hath been wikkedly raviſsh.ed and taken away. I ſe the naughty and reprovable people helped with richeſſes, and the good honeſt people beggars and nedy. Alſo Chaſtite that hath be kept in worſhipe, nowe is conſtrayned and brought into myſchevous vylanye. So then thorowe myſcheve, neceſſite, and outrage, man can nat have that is his; nor no good dede may receive the reward after the vertu therof; but ſtrength maykyth right after his owne opynyoun, and over pride uſurpeth to have worſhip without eny defert. Where is then the divyne Juſtice or to what tyme is ſhe reſerved, when ſhe may nat helpe us nor amende our myſcheves whenne we have mooſt neede unto her?

Feythe.

Yf your felicite were oonly in the goodes of this worlde and your beyng were fixt without abdyng of an higher lif, thenne wolde I thynke that there were greet apparance in thyne argument; but the verrey rightwiſneſſe[1] is fynal punycioun of hem that be dampned, and the rewardes of honeſt folkes is nat to be getyn in this worlde. For who that ſeeth the evill dedys unpunyſshed, and the good dedes evil rewarded amonge the either people, may wele thynke that ther is another thynge, thorowe which al is reformed by egall Juſtice, or elſys the ſame Juge that maynteneth in this dedely worlde were nat rightful to every man. And by this diverſe enforced[2] hem ſelf to ſhewe the perpetuyte of the ſowle, the reſinge of the body, and the general Jugement. But it ought ynowe ſuffice man ſuche thyng as the Creator hath liked to ſhewe by me. But of commune ſynnes here beneth, men ſe al day erly, or late, enſamples of indignacion and execucion of payne uppon the ſame; for when the . . . . . .

[The remainder is wanting.]

[1] i.e. the true juſtice.

[2] i.e. ſtrengthened their argument.

EXTRACTS AND FRAGMENTS FROM THE MISSING TRACTS WRITTEN BY CHANCELLOR SIR JOHN FORTESCUE, ON THE CLAIM OF THE HOUSE OF LANCASTER TO THE CROWN OF ENGLAND.

THE following fragments, being all that are known to exiſt of the Tracts written by Chancellor Forteſcue in ſupport of the right of his maſter Henry VI. to the throne of England, are now, with a ſingle exception, to be noted in its place, printed for the firſt time.

They form parts of three of thoſe Tracts, namely:—

1. "Of the Title of the Houſe of York."
2. "Defenſio Juris Domûs Lancaſtriæ."

And a ſhort piece on one leaf, entitled:—

3. "A Defence of the Houſe of Lancaſter."

Theſe ſhort treatiſes were written, it is believed, in Scotland, while Forteſcue was in attendance upon Henry in exile there, with the intention that being ſent into England and there circulated, they ſhould prepare men's minds to receive him back again when his Queen's negotiations with the French and other foreign ſovereigns ſhould have ſecured ſuch aſſiſtance as might enable him, with his Engliſh adherents, again to take the field againſt Edward.

The remains of the firſt of the above-named Tracts were diſcovered in the Britiſh Muſeum by the perſeverance of Mr. Richard Sims, who conducted a ſearch there for me.

Of the paſſages from the ſecond Tract the four firſt are from the James MSS. in the Bodleian Library, where they are entitled "Quædam excerpta ex Forteſcue contra Titulum Edwardi Quarti." The collection in which they are found is deſcribed by Biſhop Tanner in his Catalogue as "Codices Scripti xliii empti è libris Ricardi Jameſii Theologiæ Doctoris." This Doctor Richard James, a Fellow of Exeter College, Oxford, in 1615, was a learned ſearcher of ancient documents, and a friend of Sir Robert Cotton, of whoſe library he had ſole charge for ſome years; ſo that he, no doubt, made his extracts directly from the Cotton manuſcript of the Defenſio Juris Domûs Lancaſtriæ.

The fifth extract is reprinted from the Appendix to the "Hereditary Right to the Crown of England Aſſerted," by Bedford, who alſo has preſerved in the ſame work a ſmall portion of the extract No. 2., quoted by him as taken from the Defenſio Domûs Lancaſtriæ; whence we are able to conclude with certainty that James's extracts are part of the ſame treatiſe.

The tranſlation of the paſſages from the "Defenſio" is by the Right Honourable Chicheſter Forteſcue.

For the extract from the third Treatiſe I am indebted to the kindneſs of Sir Thomas Phillips, Bart., of Middlehill, who, although when my requeſt reached him his vaſt collection of MSS. was ſtill diſarranged by its recent transfer to Cheltenham, very kindly ſearched for the document, and allowed a copy to be taken.

Although the long-continued inquiries made by the editor in various directions and through many channels, for perfect copies of theſe and other writings by Forteſcue on the ſame ſubject have been without fruit, their partial recovery need not be regarded as entirely hopeleſs, becauſe a volume which contained ſome of them was miſſing from the Cotton Library before the fire when Smith's Catalogue was made; its deſtruction, therefore, although but too probable, is not certainly known as a fact.

It will be found that Forteſcue in theſe Tracts often repeats his arguments, and ſometimes in almoſt the ſame words. This may to ſome extent be accounted for by the ſuppoſition that he wrote in Engliſh for his own countrymen, and in Latin for the foreigner.

FRAGMENTS OF A TREATISE

BY SIR JOHN FORTESCUE, KNIGHT,

ENTITLED

OF THE TITLE OF THE HOUSE OF YORK.

OF THE TITLE OF THE HOUSE OF YORK.[1]

Principium deeſt.

[*Here folowethe the firſte anſwere made againſt the foreſaide pretended title.*]

. . . . . .

KING HENRIE THE FIFTE ſeeing] that the Kinges of Englande ſo comyn of a dawghter of Fraunce, maie not enjoy the ſayde Lande of France by ſuche title, he agreed, beyng a righteouſe Prince, to leave that title, and the name of Kinge of France, and to wedd a dawghter of the howſe of France. And therupon by the aſſente of the Kinge of France, and the three Eſtates of the ſame lande was made Regent, heire, and inheritor, of the realme of France, to be had to him, and to his heires males, immediately after the death of Charles then Kinge of France. By force of which, and not by title of deſcent, the foreſaide Kinge Henry the ſixt ſonne to the ſaide Henry the fifte, after the death of the ſame Kinge his father, and alſo after the death of the ſaide Kinge Charles, was at Paris enoynted and crouned Kinge of the ſame lande. And in like forme the Duke of Lancaſter, and the Duke of Yorke, which had wedded two daughters of the houſe of Spaine, ſhuld have had that realme if the croune therof had be deſcendable to heires females, as it was not. Wherfore they had never that realme. But after the death of Peter Kinge of Spaine father to the ſaide two daughters, that Lande choſe and took to theyre King Henrie, Baſtard brother to the ſame Peter, which was legitimate by the Pope. For, as it ſeemeth, God hath made a law to all women that they ſhould not have immediately from him power upon man, and ſo be without ſovereigne in earth. But he bound them by his law to the contrarie, when he ſaid to the

[1] The reference for this fragment is Brit. Mus. Cotton MS. Julius F. vi.

firſt woman and to all her iſſue women, *Eris ſub poteſtate viri, et ipſe dominabitur tui.* Wherfore a cuſtome or a law made in ſuch a relme as hath no ſoveraigne in yearth, that a woman ſhould be ſoveraigne therof, where as it ſemeth againſt the lawe made by God, maie not then be caled a lawe, but rather abuſion, and in Latin called *Corruptela et non Lex.*

It ſeemeth right inconvenient that a woman by right of inheritance ſhould be Queene or ſoveraigne Ladie of ſuch a realme, and namely of England; ſithen the Kinges therof ben perſonns mixt, and enoynted, having power temporall mixt with power ſpirituall in manie things; as making Collation to Prebends in Cathedrall Churches in time of voidance of Biſhopprickes, and ſuch other mixte power, which be not convenient to women for to execute. And ſithen the Kinges of England ben enoynted in theyre hands, and by vertue and meane therof God commonlie healeth ſicknes, by putting to and touching the maladie, by thenontinge hands; and alſo gould and ſilver handled by them, and ſo offred on Good Friday have ben the meane and cauſes of great cures, as it is knowne, and therfore ſuch gold and ſilver is deſired in all the world. Which good things muſt needes ceaſe for all the time that a woman were ſo Queene of that land, becauſe that a woman may not be enoynted in her hands. And alſo everie Queene enoynted, is enoynted in a lower part of the bodie then a King, becauſe ſhe ought handle no ſworde, nor doe anie violence by might; ſo it were full inconvenient to womankind. And yet the Apoſtle ſaith of a King, that he beareth the ſword not without a cauſe. And alſo it were full inconvenient that a woman ſhould be a judg as is a King, in criminall cauſes, and command a man to be dead. And if her ſon by reaſon of her ſhould in her life or after her death be a Kinge while there weare anie iſſue maſle alive deſcended of the lyne royall, it would happen in fine that the ſon of ſome vile and unnoble perſon, in blood and in name eſtranged to the [Kings] of the ſaide lande ſhould be King of the land before the maſle deſcended of the noble and roiall blood, and of the name of Kinges of the ſame land. Which was to foule an inconvenience to be ſuffred in anie land. Wher it hath not been ſeene, nor read in anie cronicle, that the iſſue of a woman by reaſon of his moder, hath be a Kinge of anie lande, while there was iſſue maſle on live deſcended as by maſles of the lyne roiall of the ſame land.

Item, if a woman by ſuch title ſhould be a Queene and ſoveraigne Ladie, manie miſcheives and harmes might enſue therby. As when a King had manie daughters, and no ſonne, the monarchie of the realme by ther huſbands might be divided into manie realmes. And if the daughters were wedded to Kings and Princes in other lands, the revenues of ther owne land might therby be caried out of the ſame land unto the uttermoſt deſtruction therof. And alſo they might take huſbands, enemies or ſervants, ſingular inhabitants of their lands, which huſbands ſhould ther be Kings and ſovereyne lords, having power uppon thoſe to whom they were enemies unto; and of that that before ſuch mariages, they were ſervants or bondmen peradventure unto, which were to great perill. Alſo by long ſucceſſion of theyr

iſſue being weomen the realme might be devided by poſſibilitie among a hundred perſons and moe, [ſtopping to] the uttermoſt any entiſinge ;[1] and deſtruction therof.

It is not like to be true that Phillipe ſpecified in the foreſaide pretended title, ſhoulde have be dawghter to the foreſaide Lyonell, or that he had any iſſue which overlyved him. For all the Cronicles which be written of him, and of his four bretheren, maken mention what iſſue evereche of his bretheren had; but they make no mention of his owne iſſue. And alſo he was Duke of Clarence, and bare the Kinge's armes with certayne labelles, but after his deathe no man or woman bare his Eſtate or name of Duc, or bare his armes. And if the foreſaid Phillipe had ben his dawghter, her huſbande, and ſhe, and alſo her ſonne Roger, and Edmund his ſonne, and all other of that lyne ſethence, woulde have borne his armes as the armes by whiche they had bin moſt worſhipped, and approved to be prive of bloode to the Croune of Englande, as other men and women, the iſſue to the remanen e of the ſame brytheren, did. Wheras the bare always the armes of the Erle of Marche, and of Ulſter, otherwhile hole, otherwhile departed, and never the armes of the forſaid Lionel being Duc of Clarence. And the Kinges ſeconde ſonne, havinge no more children but one dawghter, as it is ſuppoſed by the foreſaide pretended title, woulde not have ſuffered that dawghter which by birth had bin a mariage for a Kinge, to be maried to a man of ſo lowe bloode as the father of the ſaide Roger ſpecified in the title, was of, and namely ſithen he was comen of a corrupt b[loode] namely of Roger Mortymer which was attaynte of highe treaſon to Kinge Edwarde the third, father to the ſaid Lyonell Duc of Clarence. But it is open enough in Cronicles, and namely in the realme of France, how that the dawghter of the Erle of Ulſter wedded to the ſaid Lyonell, bare a dawghter caled Phillip while the ſame Sir Lyonell was beyonde the ſea out of Englande continually the yeare before, and long after. Wherfor he never after that time ſe the mother or the childe. But Sir James of Audeley then ſtewarde of the Kinge's houſehold, which was ſurmiſed[2] with the gettinge of the ſaid Phillipe, was aſked[3] by occaſion therof, and for a certayne [charge] ſubmitted upon, was atteined of heigh treaſon, and his heade ſmitten of, as [by a pedi]gree ſett at the [end of the] booke openly it may appear.

Here followeth the ſeconde anſwere, made after the common lawe uſed in all the worlde, and namely amonge Kinges, and alſo made after naturall reaſon, againſt the foreſaide pretended title.

Kinge Henry the fourthe, cõuſin germayn to the forſaide Kinge Richarde the ſeconde, s

[1] Entiſinge, i.e. acquiring, increaſing of wealth.

[2] Surmiſed, i.e. ſuſpected.

[3] Aſked, i.e. interrogated.

next to him of his bloode, and alſo next heire maſle, that is to ſay ſonne to John, brother to Edwarde fader to the ſaide Kinge Richarde, was annoynted and crouned Kinge of Englande by the hole aſſente and will of all that lande, no man reclaiminge. And ſo continued Kinge peaceably without claime or interruption made upon him by any man for the terme of his life. And after his death the croune and realme of Englande deſcended to Kinge Henry the fift his ſonne and heire, which in the like forme and aſſente and will was enoyted and crouned Kinge of Englande; and ſo continued, and rayned peaceably all his life, without any interruption or clayme made upon him by any perſon. Before whoſe raigne Roger ſumtyme Erle of Marche, by whom the forſaide Edwarde that now claymeth the realme of England conveieth his title and diſcente, had iſſue Edmunde late Erle of Marche, and dyed ſeſed of the Erldome of Marche. After whoſe death the ſame Erldome of Marche deſcended to the ſame Edmunde as to his ſonne and heire; which came into the chancerie of the ſaide Kinge Henrye the fifte and ther ſhued his liverie of the ſaid Erldome as ſonne and heire to his father, and did for the ſame Erledome to the ſame Kinge as to his Soveraygne Lorde homage Lyege. And after that, the ſame Erle Edmunde under the Seale of Lyege, and of his Armes, and his ſigne manuell, endented with the ſayde Kinge to be his ſoldier by a certayne time, within the duchie of Normandye; callinge the ſame Kinge in that wrightinge his ſoverayne Lord Kinge of Englande, and of France.

And after that, for as much as Richarde Erle of Cambridge which had wedded Anne ſiſter to the ſaide Edmond, and was grandfather to the ſaide Edwarde that now claimeth, had prively ſtirred the ſaid Edmond Erle of Marche, to have aſſented unto the deſtruction of the ſaid Kinge Henrye the fifte, and to have taken upon him to have ben Kinge of Englande, the ſame Edmund as the Kinge's true Lyege man, and not claiminge to be Kinge, diſcovered that treaſon to the ſaide Kinge Henry the fifte, and cauſed thereby the ſame Erle of Cambridge his brother to be arreſted, which afterwarde was atteynted, and dyed therefore by judgmente. Which proveth that the ſaide Erle Edmunde willed not to clayme the Croune of Englande. And the ſaid Kinge Henrye the fifte, for any clame made upon him by that Erle, did dye ſeaſed therof. And then the ſame Croune and realme deſcended unto the forſeid Kinge Henry the ſixt as to his ſonne and heire, to whome the ſaid Edmunde Erle of Marche did alſo homage Lyege while the Kinge was full tender of yeres. And then the ſaide Edmunde dyed without iſſue of his bodie. After whoſe deathe the Erledome of Marche, and alſo of his liveloode.[1]

Hic deſunt multa.

[1] Of his liveloode, i. e. part of his eſtate. The word is thus uſed in the "Declaracion," further on. The reſt of this ſentence, from what is elſewhere ſtated, muſt have been to the following effect: "was given to Richard Duke of York the ſonne of his ſiſter Anne, by the foreſaid king Henry the ſixth, to whom the ſaid Richard did homage liege for the ſame."

By which[1] meanes it may openlie appeare, that ſaide Edwarde late Erle of Marche is forcluded and barred by all lawes uſed amonge Kinges, or princes perſonnes, and namely within the realme of Englande, and alſo by naturall reaſon, to clayme the Kingdome of Englande, for the which and all title to the ſame his forſaide anceſtors that he claymeth by, and alſo he himſelfe, have ſo cleerely barred and concluded themſelfe, and all ther heires after them, by matters of recorde, as by lyvery, ſuing in the Kinge's Courtes, Actes of Parlementes, matters in deed, as homages doinge, and by ther letters and ther ſeales ſigned with ther handes, and by others, which be all the meanes of excludinge, barringe, and concludinge themſelfe and ther heires, that can be had, or thowght to be hadd within the realme of Englande. And if he had anie right to the ſaide Crowne and realme of Englande, which he had not, yet the ſame right by the aforeſaide meanes had be fully quenched and extinct.

Here foloweth the third anſwere made after the Lawe of God and of his church unto the aforſaide pretended title.

It is ſo that King Henrie the fourthe and his ſonne Kinge Henrie the fifte, and his ſonne the forſaide Henrie the ſixt, have ſucceſſively and peaceably, without claime or interruption made upon them by anie perſon, ben Kinges annoynted and crowned by the hole aſſent of all the Lordes and Commons of Englande ſixty three yeare and more. Which excedeth the longeſt præſcription limited in the lawe of the Churche, except the præſcription which is required if anie title there ſhall growe aganſte the Churche of Rome. And ſithen title of præſcription is a ſure and ſtrong title in the lawe of the Churche, the ſaide Kinge Henrie the ſixt is ſurely and ſtrongly entitled by the lawe of the Church. Item Seint Auguſtine ſaith wheras he treateth theſe wordes *Quid ſunt regna niſi magna latrocinia*, that four things maie eſtabliſh Kingdomes gotten by conqueſt. That is to ſaie, acceptation of God; approvinge of the Churche; longe continuance of poſſeſſion, and th'aſſente of the people. Which four the ſaide Kinge Henrie the ſixt hath in his Kingdome. For that realme deſcended to him being not fully a yere olde; which was the deed of God, ſithen the ſame Kinge had then none age to deſire it. And the Churche hath approved him and his reigning by accepting of his Protecture in the Counſell general, and in the Court of Rome; and alſo under Bulles made unto him by diverſe Popes and by manie other diverſe meanes. And he is entitled in his Kingdome by long continuance, as by the foreſaide title of præſcription, and by the aſſente of the people of the whole land of England. For they tooke and admitted

[1] Before the words "By which" in the MS. is this broken line—

. . . . . ſame parlemente was bounde unto the ſame.

him to be theyr King, when he was, as is before faide, not fullie one yere olde. And with ther hoole aſſent he was enoynted and crowned King uppon them, when he was not fully eight yeares olde.[1] . . . . . .

Alia multa hic deſunt.

[1] The word "and" is in the MS. here after "olde."

OPUSCULI JOHANNIS FORTESCU MILITIS

CUI NOMEN

DEFENSIO JURIS DOMŪS LANCASTRIÆ,

FRAGMENTA QUÆ SUPERSUNT.

DEFENSIO JURIS DOMŪS LANCASTRIÆ.

I.

AD quod dicit miles predictus, quod nulla mulier obstantibus lege et consuetudine Angliæ in jure coronæ et regni illius succedere potest, sed ad hæredes semper masculos defundendum est; sicut de facto per evidentias et exempla quæ inter alia tam citra conquestum per Normanos de eodem regno factum, quam ante eundem conquestum contingere clare liquere potest, et in articulis duobus proximus luculenter apparebit.

Femina non fecerit in regnum Angliæ.

Henricus primus filius conquestoris Wilhelmi nullam filium sed solam filiam Matildam nomine habuit, quæ Almanniæ Imperatori desponsata fuit, et post ejus fatum Comiti Andegaviæ, à quo sobolem suscepit Henricum filium Imperatricis nominatum. Et post decessit Henricus ille primus, decessit et Andegaviæ Comes sponsus Mathildæ. Post quorum utrorumque fata licet memorata Imperatrix titulo patris sui hæreditario Ducatus Normanniæ possessionem, et filius suus Comitatus Andegaviæ patris sui jure pacifice et quiete acceperint, eaque fuerunt potiti, dicta tamen Matilda nunquam jura regni aut coronæ Angliæ nacta est, aut fuit unquam Angliæ Regina effecta, instetit tamen fortissime ut potuit, quatenus dictus filius suus tanquam proximus de sanguine Regis Henrici primi avi sui, quumque per lineam fœmineam descendens, ad possessionem regni et coronæ Angliæ admitteretur, cujus frustrata petitio fuerat, dum Domini, proceres, et communitas Angliæ acquiescere sibi, aut votis suis legibus et consuetudinibus Angliæ obstantibus minimè voluerunt. Sed, omisso illo Henrico Imperatricis filio, considerantes nullum superstitem esse lineæ masculinæ, humanitate quadam ducti, potius Stephanum Comitem de Bloys et de Boulogne filium fororis dicti regis Henrici primi sanguinis amore in Regem Angliæ eligerunt; ut dictus Henricus sanguine proximior si electus fuisset titulo matris, regni se gubernacula accepisse contra memoratas leges et Angliæ consuetudines presumpsisset. Qui quidem Stephanus sic communi consensu regni electus unctus erat, et in Regem Angliæ coronatus, ac totâ vitâ suâ videlicet decem et octo annos et amplius ibidem regnavit; fundavitque ad perpetuam rei memoriam Abbatiam de Feverſchame, vbi sepultus quiescit, Abbatiam de Cogsale, et alias domus religiosorum preclaras.

Tempore tamen dicti Stephani, mortuis primo duobus filius ſuis quos ſolos habuit, vivente tamen Mathildâ filiâ ſuâ, communi conſenſu procerum et Communitatis regni Angliæ ad inſtantiam et requiſitionem ipſius Stephani, in publico parliamento ordinatum atque concluſum eſt quod Henricus filius Imperatricis etiam eidem Stephano in ſanguine proximus maſculus mortuo ipſo Stephano fieret Rex, et hæredes ipſius Henrici maſculi poſt ipſum ſuccederent in jure regni et coronæ Angliæ. Et ſic actum eſt. Nam mortuo Stephano Henricus ille, vulgariter filius Imperatricis vocatus, vivente adhuc matre ſua Mathildâ totius regni conſenſu, et non aliter, in Regem Angliæ unctus et coronatus eſt; iſtoque modo et non matris titulo regni gubernacula ſumpſit, quemadmodum tam ex cronicis quam ex geſtis in parliamento memorato evidentiſſime patet; qui ordo non taliter fuiſſet ſervatus, ſi Mathilda hæres regni fuiſſet, aut ejus filius jure ipſius in regno ſuccedere debuiſſet.

Acta Parliamenti tempore Regis Stephani.

Jam ante conqueſtum Sanctus Edwardus Chriſti Confeſſor toto tempore vitæ ſuæ pacificus Rex Angliæ in fatum diſcedens voluit et ordinavit quod Wilhelmus Dux Normanniæ, conſanguineus ſuus germanus ex Gunildâ amitâ ſuâ ſorore patris ſui, in jure coronæ Angliæ ſibi ſuccederet; qui etiam ſic ſibi poſt ejus mortem conqueſtu tamen ſucceſſit, et Rex Angliæ coronatus ſuâ durante vitâ regnavit. Non obſtante quod dictus Sanctus Edwardus habuit conſanguineam, filiam Edwardi filii fratris ſui ſenioris Edmundi videlicet Ferreum Latus vulgariter vocati, nomine Margaretam, quæ Malcolmo Scotorum Regi deſponſata erat, et ex qua omnes ab illo tempore hactenus Reges Scotorum deſcenderunt. Et tamen neque dicta Sancta Margareta licet a fratre ſeniori dicti Sancti Edwardi exitus, neque ullus maſculus ab eâ deſcendens ſucceſſit aut ſuccedere potuit aut ſuccedere vindicavit in jure regni et coronæ Angliæ, obſtantibus legibus et conſuetudinibus Angliæ ſupradictis.

Alioquin videretur quod Sanctus Edwardus et ſucceſſores ſui ejus ordinatione, medio, et voluntate, injuriam fecerunt dictæ Sanctæ Margaritæ et ſucceſſoribus ſuis, quod non erit preſumendum de tam Catholico atque Sancto viro, nec fas eſt dicere.

II.

Regnum Angliæ ſpecialiter talliatum.

NEMO poteſt plus juris in alium transferre quam ſibi competere dinoſcatur. Et ſic cum fœmina talis in terris ita ut dicitur talliatis non poteſt ſuccedere, multo magis in filios ab eâ deſcendentes ſucceſſionis jura transfundere nequit, prout in regno Angliæ indubitato jure obſervatur ſicuti judicibus omnibus ac doctis viris et in jure illius regni peritis conſtat.

III.

ITEM præſumendum non eſt quod regnum aliquod tale præſertim cujus ab antiquo Reges . . . . . ſolent, et nullum in terris ſuperiorem in temporalibus recognoſcunt, cujus modi regnum Angliæ eſt, jure hæreditario ad mulieres eſſet devolvendum, aut in maſculos ab eis deſcendentes ipſarum titulo abſque electione ſeu aliâ auctoritate adjunctâ; ſicuti per ſubſcripta exempla patere poteſt, primo de regno Franciæ exempli cauſâ exordiendo. Si fœminæ regnum Franciæ hæreditaſſent, hoc regnum ante hæc tempora mulieris jure ad regnum Navarriæ deveniſſet, et aliâ vice, ſimili titulo Comiti Flandriæ, alioque tempore ſimili jure et titulo Regi Angliæ, quemadmodum per cronicas Franciæ liquidè conſtare poteſt. Adeoque famoſiſſimus princeps Henricus hujus nominis quintus Rex Angliæ tali titulo diu regnum Franciæ vindicavit, licet poſtea, ut Chriſtianiſſimus, doctorum virorum uſus conſilio, habitoque tractatu longo, titulum illum conſultè reliquerit, et Katrinam filiam Caroli tunc Franciæ Regis cepit in uxorem; cujus maritagii gratiâ, ut lites queſtioneſque diverſæ quæ tunc inter eoſdem Reges, et eorum regna vertebantur indiſcuſſæ perpetuum finem ſortirentur, de ejuſdem Regis Caroli triumque Statuum regni ſui communi aſſenſu ordinatum fuerit firmiter et concluſum, quod dictus Rex Henricus ex tum eſſet, realiterque nominaretur Regens et hæres regni Franciæ et non Rex Franciæ totâ vitâ ipſius Regis Caroli; et poſt ejus mortem, ipſe Rex Henricus et omnes hæredes ſui maſculi de corpore ſuo exeuntes eſſent immediatè realiter, de jure et facto, Reges regni Franciæ in perpetuum; cujus vigore idem Rex Henricus poſtmodum et tantum hæredem et regentem regni Franciæ et non Regem Franciæ in omnibus ſcriptis ſuis totâ vita ſua appellavit, et appellari fecit. Conſimiliterque poſt ejus mortem appellari et fecit hæredem regni Franciæ prefatus Henricus filius ejus totâ vitâ prefati Caroli regis, qui erat avus ejus, videlicet pater prefatæ Katrinæ Matris ſuæ; et poſt mortem illius Caroli idem Henricus ſextus titulo predicto unctus fuit et coronatus pacificè Pariſiis in Regem Franciæ de aſſenſu pariter et conſenſu majoris partis omnium principum et dominorum nec non procerum et communitatis totius regni Franciæ. Item ſi jura talium regnorum ad mulieres deſcenderent, regnum Hiſpaniæ dudum ad Duces Lancaſtriæ et Eboraci titulo mulieris perveniſſet, cum duo illi Duces duas duxerint filias Regis Hiſpaniæ, et tamen regnum illud ad eos aut eorundem alterum minimè pervenit; ſed poſt fata Petri Regis Hiſpaniæ dictarum filiarum patris, proceres et gentes regni ejuſdem Henricum fratrem baſtardum memorati Regis Petri per Papam legitimatum in Regem ſuum erexerunt.

Apparet inſuper ex ordine ſacræ ſcripturæ quod Deus abdicavit mulieribus ſupremam ſuper viros poteſtatem propter tranſgreſſum primæ mulieris, dum dicit, "Eris ſub poteſtate viri, et ipſe dominabitur tui." Quamobrem lex aut conſuetudo quæ mulieri ſucceſſionis titulo regimen regni differet, talis potiſſimum regni quod nullum in terris in

temporalibus ſuperiorem habet, corruptela potius quam lex aut conſuetudo meritò eſt dicenda

Item Regibus Angliæ Regali ipſo officio plura incumbunt, quæ naturæ muliebri adverſantur, et Regibus Angliæ quædam ſpeciali gratia cœlitus infuſa ſunt quæ Reginis ibidem non infunduntur. Rex videlicet Angliæ auctoritate Eccleſiæ mixta perſona cenſetur, adeoque vacantibus epiſcopatibus Reges ibidem omnes prebendos eccleſiarum Cathedralium ſic vacantium interim vacantes conferunt quibus volunt, et breviariis ſuis Regiis collationes illas faciunt, quibus breviariis iidem prebendarii in prebendis ſuis ſufficienter in lege intitulantur et inveſtiuntur, ac in eiſdem eccleſiis Cathedralibus, ut Canonici earundem vigore hujuſmodi breviariarum Regiorum incorporantur; et ſic in hoc et pluribus aliis caſibus quæ oſtendi poſſunt poteſt Rex Angliæ epiſcopi vices exercere, quæ poteſtas mulieribus non convenit, nec mulieri unquam fuit conceſſa. Reges inſuper Angliæ in ipſa unctione ſuâ talem cœlitùs gratiam infuſam recipiunt quod per tactum manuum ſuorum unctarum, infeſtos morbo quodam qui vulgo Regius morbus appellatur, mundant et curant, qui alias dicuntur incurabiles. Item aurum et argentum ſacris unctis manibus Regum Angliæ in die Paraſcivæ divinorum tempore, quemadmodum Reges Angliæ annuatim facere ſolent, tactum devote et oblatum ſpaſmaticos et caducos curant; quemadmodum per annulos ex dicto auro ſeu argento factos et digitis hominum morbidorum impoſitis multis in mundi partibus crebro uſu expertum eſt; quæ gratia Reginis non confertur, cum ipſæ in manibus non ungantur. In ſuper Regina in inferiori parte capitis ungitur quam Rex, in ſignum quod ſuperiorem habet; nec in brachiis ungitur, ut Rex, quia non debet exercere voluntariam poteſtatem, nec gladium portare, prout Rex facit, et non ſine cauſa, ut inquit Apoſtolus, cum eſſet contra naturæ normam mulierem ſe virilibus immiſcere officiis. Præterea contingere poſſit quod hujuſmodi Regina inconſulto calore amoris ignobilem aut qui vili forſan ſtirpe ortum traheret ſuum, acceperet in maritum, cujus liberi Regale poſtea ſolium tenerent, et viventibus adhuc nominis et lineæ Regalis nobilibus, ſceptra regni geſtarent, quod flebile nimis auditu foret, et longè magis horribile viſu.

Quadrobrem nunquam viſam aut auditam eſt quod extantibus maſculis ex lineâ Regali progreſſis in regno aliquo et maxime in Angliâ mulier quantumcunque gradu propinqua coronam regni acciperet aut eam titulo ſuo in ſuos ſucceſſores transfunderet. Attamen bene convenit ut, ceſſante exitu maſculino, filius fœminæ in lineâ Regiâ proximè qui nobili patre proceſſerit, et probitate ſuâ honore dignus fuerit, per Dominos et comunitatem regni, cum caſus hujuſmodi contigerit, ante omnes alios a ſanguine Regis remotiores ad culmen Regium erigatur.

IV.

SEQUITUR hîc tertium reſponſum lege ſacro-ſanctæ eccleſiæ roboratum.

Rex Henricus quintus, ac poſt ipſum filius ſuus Rex Henricus ſextus adhuc ſuperſtes ſucceſſivè Reges uncti et coronati regni Angliæ per ſexaginta et tres annos et amplius continuos communi conſenſu et aſſenſu totius regni illius pacifice ac ſine cujuſcunque contradictione aut reclamatione factâ, bonâ fide, regnaverunt, quod quidem tempus longiſſimam preſcripſionem inducit et plus, preſcripſione contra Eccleſiam Romanam tantummodo exceptâ. Cum igitur titulus preſcripſionis talis jure eccleſiæ ſatis ſit ad acquirendum dominium, ſequitur quod Rex Henricus ſufficienter intitulatus eſt in regno Anglia jure Eccleſiæ.

Nulla præſcriptio contra Romanam Eccleſiam.

V.

POST Henrici quinti fata Chriſtianiſſimus Princeps Henricus ſextus, ejus filius et Hæres, Parentum ſuorum æquo et juſto titulo, in jure coronæ et Regni Angliæ ſucceſſit; tenerrimaque ætate in Regni ejuſdem Regem, nullo contradicente, ſed uno omnium applauſu, unctus et coronatus eſt. Cui etiam adhuc inter ubera volutanti, et nondum coronato, præfatus Edmundus Comes Marchiæ, tanquam hæredi ejuſdem Henrici quinti Regique ac Domino ſuo ſupremo, cum omni humilitate ultro ligeum fecit homagium, et ad hoc faciendum quam celerrimè potuit libentiſſimè properavit.

Poſteà verò dicto Edmundo Comite ſine Hæredibus de corpore ſuo exeuntibus a rebus humanis exempto, Ricardus nuper Dux Eboracenſis, Pater iſtius Edwardi et Nepos iſtius Edmundi, videlicet filius Anna Sororis ſuæ, tanquam proximus ſibi Hæres, in Cancellariâ ejuſdem Regis Henrici ſexti, ſecundum modum Curiæ illius, poſſeſſionem dicti Comitatûs ſibi, tanquam proximo hæredi ipſius Edmundi, ab eodem Rege, tanquam a Domino ſuo ſupremo, deliberari petiit et obtinuit. Et ob hoc idem, ut ſuo Regi et ſupremo Domino, homagium ligeum fecit; et poſtea, ſuis indenturis, ſigillo armorum et ſigno ſuo manuali ſignatis, dicto Regi ſuo Henrico ſexto ſe obligavit, de ſe fideliter gerendo et habendo in officio Locum Tenentis ſui in Francia, quod et diu fecit. In quibus ſcriptis ipſum Henricum Dominum ſuum ſupremum, Angliæque et Franciæ Regem nominabat. Poſteáque a partibus Franciæ ad Angliam reverſus, ſimilibus ſuis ſcriptis indentatis, ſuoque ſigillo armorum una cum ſignô manuali ſuo ſignatis, ad fideliter ſerviendum eidem Domino ſuo ſupremo in officio Locum tenentis ſui in Hiberniâ, quoad placeret Regi ipſum revocare, omnibus modo, viâ, et formâ juris, quibus melius potuit, ſe aſtrinxit et obligavit; ipſumque Regem Henricum ſextum, in

illis etiam ſcriptis ſuis, ſupremum Dominum ſuum, Regemque Angliæ et Franciæ, ſemper profitendo, nominavit.

Iterum etiam, dum Rex Henricus tantâ ægritudine vexatus fuerat, quod regni ſui gubernaculis perſonaliter intendere non valuit, dictus Richardus Dux Eboracencis, ſcriptis ſuis ſigillo armorum, ſuoque ſigno manuali notatis, ipſum Regem ſponte Dominum ſuum ſupremum, regemque Angliæ et Franciæ nominavit; et in publico Parliamento, durante infirmitate illâ, Protectoris et Defenſoris Angliæ officium, auctoritate ejuſdem Parliamenti, in ſe aſſumpſit, pleno corpore Regni in Parliamento illo, et ſecundum jura Angliæ repreſentato; et dictum Chriſtianiſſimum Principem Henricum ſextum, Regem Angliæ ſuumque ſupremum Dominum in plenâ curiâ Parliamenti illius de recordo appellavit; cumque tunc temporis Rex ipſe, obſtante infirmitate prædictâ, nullum ſibi ad ſic faciendum timorem incutere potuit.

Item idem Richardus, vice repetitâ ſupra ſacrum Corpus Chriſti ſacramentalitèr viſum juravit, quod ſemper fidelis ſubditus et ligeus eſſet eidem Regi ſuo Henrico ſexto, et pro poſſe ſuo defenderet et adjuraret, atque pro viribus ſuis totis ad Statûs ſui Regii conſervationem incrementumque ageret, et ad ejus confirmationem Corpus Chriſti recepit. Quibus juramentis non modo corpus, ſed animam ſuam, ſuumque honorem ſtrictius fortiuſque, quam aliquo temporali vinculo potuit, obligavit.

Edwardus etiam iſte filius ſuus, jam Regni uſurpator, conſimilitèr in præſentiâ Cleri totius Provinciæ Cantuarienſis ad tunc convocati in Eccleſiâ S. Pauli Londonii ſuper Crucem Cantuarienſem jurant ſolemniter, quod ſemper honoraret Dominum ſuum ſupremum Regem Henricum ſextum, ipſumque pro Rege Angliæ et Domino ſuo ſupremo acciperet, et ſibi humiliter, ut Regi ſuo, totâ vitâ ſuâ obediret, et poſtea in publico Parliamento juramentum ſuum repetiit pariter et renovavit.

Ex quibus præmiſſis liquet æquo intuentibus lumine, quod ſi progenitores Edwardi hujus nunc uſurpantis, a principio jus aliquod ad coronam et regnum Angliæ habuiſſent, quemadmodum nunquam habuerunt, ab illo tamen jure per promiſſiones et affirmationes ſuas ſub ſigillis et ſignis ſuis manualibus roboratas, per renunciationes ſpontaneas tam tacitas quam expreſſas, etiam in Parliamento et Convocatione Cleri, quæ maximæ auctoritatis ſunt, affirmatas et per juramenta ſolemnia ſponte facta, receſſum eſt plenariè et abſolutè. Adeoque ſi habuiſſent jus, prout non habuerunt, omnis tamen via petendi illud eis eorum facto proprio præcluſa eſt, idemque jus in lege annihilatum extat et extinctum.

A TRANSLATION OF THE FOREGOING PASSAGES FROM DEFENSIO JURIS DOMUS LANCASTRIÆ.

I.

TO which the Knight aforeſaid ſaith, that no woman, in oppoſition to the law and cuſtom of England, can ſucceed to the rights of that crown and kingdom; which, on the contrary, muſt always paſs to male heirs, as may be made clearly evident to be in fact the caſe by proofs and examples, both ſince the conqueſt of the ſaid kingdom by the Normans and before the ſame, and as in the two next articles will plainly appear.

Henry I., ſon of William the Conqueror, had no ſon, but only a daughter, Matilda by name, who was eſpouſed to the Emperor of Germany, and after his death to the Count of Anjou, by whom ſhe had iſſue Henry, called Fitz-Empreſs. But afterwards Henry I., and the Count of Anjou huſband of Matilda, departed this life, after whoſe deaths, although the Empreſs aforeſaid, by her father's hereditary title, and her ſon the Count of Anjou in right of his father, peacefully and quietly took and enjoyed poſſeſſion of the Duchy of Normandy and County of Anjou, nevertheleſs the ſaid Matilda never acquired a right to the kingdom and crown of England, nor was ever made Queen of England, and yet ſhe inſiſted moſt ſtrongly with all her power that her ſaid ſon, as neareſt in blood to King Henry I., his grandfather, although through the female line, ſhould be admitted to poſſeſſion of the crown and kingdom of England, which petition of hers availed nothing, inaſmuch as the lords, nobles, and commonalty of England refuſed by their votes to aſſent thereto in oppoſition to the laws and cuſtoms of England. But, ſetting aſide the ſaid Henry Fitz-Empreſs, and conſidering that there was no ſurvivor in the male line, they, out of a certain kind feeling, and from affection for the blood, elected as King of England Stephen, Count of Blois and Boulogne, ſiſter's ſon of the ſaid King Henry I.; ſo that had the ſaid Henry, the nearer in blood, been choſen, he would have preſumed himſelf to have taken the government of the realm by his mother's title. Which Stephen, being thus by common conſent of the kingdom, elected, was anointed and crowned King of England, and reigned over the ſame

all his life, that is to ſay, eighteen years, and in perpetual memory thereof founded the Abbey of Faverſham, where he reſts in his grave, the Abbey of Cogſale, and other famous religious houſes. Then in the time of the ſaid Stephen, his two only ſons being dead, but his daughter Matilda ſtill living, it was ordained and concluded by the common conſent of the Nobles and Commons of the realm of England, in open Parliament, upon the inſtance and requiſition of Stephen himſelf, that Henry Fitz-Empreſs, the neareſt male in blood to the ſaid Stephen, ſhould be King upon his death, and that the male heirs of Henry ſhould ſucceed him in his right to the kingdom and crown of England. And ſo it was done. For upon the death of Stephen, Henry commonly called Fitz-Empreſs, his mother Matilda ſtill living, was, by conſent of the whole realm and not otherwiſe, anointed and crowned King of England, and in that manner, and not by his mother's title, aſſumed the government of the kingdom, as both from the Chronicles and from the proceedings of the Parliament aforeſaid is abundantly evident; which order would not have been ſo obſerved if Matilda had been heir of the kingdom, or if her ſon had been entitled to ſucceed in right of her.

Even before the Conqueſt, Saint Edward the Confeſſor, all his days the pacific King of England, when departing this life, willed and ordained that William Duke of Normandy, his couſin-german by his aunt Gunilda his father's ſiſter, ſhould ſucceed him in his right to the crown of England, who alſo after his death became his ſucceſſor, although by conqueſt; and being crowned King of England, reigned therein during the remainder of his life, notwithſtanding that the ſaid St. Edward had a kinſwoman, daughter of Edward, ſon of his elder brother Edmund commonly called Ironſide, Margaret by name, who was eſpouſed to Malcolm King of Scots, and from whom ſince that time all the Kings of the Scots to this day are deſcended. And yet neither the ſaid St. Margaret, though ſhe were the iſſue of the elder brother of the ſaid St. Edward, nor any male deſcendant of hers, ſucceeded or could ſucceed or claimed to ſucceed to the kingdom and crown of England contrary to the laws and cuſtoms of England aforeſaid. Otherwiſe it would appear that St. Edward and his ſucceſſors, by his means, will, and diſpoſition, inflicted an injury upon the ſaid St. Margaret and her ſucceſſors, which is not to be preſumed and ought not to be ſaid of ſo Catholic and holy a man.

II.

NO man can convey any greater right to another than is adjudged to belong to himſelf. And thus as ſuch a woman cannot ſucceed to lands ſo entailed (as the term is), much leſs is ſhe capable of conveying over to her ſons any rights of ſucceſſion, even as in the kingdom of England is by undiſputed law obſerved, and as among all the judges and learned men ſkilled in the laws of that realm is agreed.

III.

LIKEWISE is it not to be preſumed that any ſuch kingdom, eſpecially one whoſe Kings from of old have reigned independently, and acknowledged no ſuperior on earth in things temporal, ſuch as the kingdom of England, ſhould devolve by hereditary right upon women, or through them upon their male deſcendants, without election or other additional authority: as may be made evident by the ſubjoined inſtances, beginning firſt for example's ſake with the kingdom of France.

If females had inherited the kingdom of France, that kingdom would before theſe days have devolved in right of a woman upon the crown of Navarre; and upon another occaſion, by like title upon the Count of Flanders, and another time by like right and title, upon the King of England, as by the chronicles of France may clearly be aſcertained. And accordingly that moſt famous Prince Henry, fifth of the name, King of England, long claimed the crown of France by ſuch a title; although afterward, like a moſt Chriſtian prince, following the advice of learned men, and after long negotiations, he deliberately relinquiſhed that title, and took to wife Katherine daughter of Charles then King of France; for the ſake of which marriage, in order that the divers ſuits and queſtions which remained unſettled between the ſaid Kings and their kingdoms might be for ever ended, it was firmly ordained and concluded by common aſſent of the ſame King Charles, and the three eſtates of his realm, that the ſaid King Henry ſhould be, and be really nominated Regent and Heir of the kingdom of France, and not King of France during the whole life of King Charles himſelf; and that after his death the ſaid King Henry and all the heirs male of his body ſhould be immediately really *de jure* and *de facto* Kings of the realm of France for ever; by virtue whereof the ſame King Henry afterwards during his life ſtyled himſelf and cauſed himſelf to be ſtyled in all his writings Heir and Regent only, and not King of France. And in like manner, after his death, the aforeſaid Henry, his ſon, cauſed himſelf to be ſtyled heir of France throughout the life of the aforeſaid King Charles, who was his grandfather, the father, namely, of the aforeſaid Katherine his mother; and after the death of that Charles the ſame Henry VI. was, by the title aforeſaid, peacefully anointed and crowned King of France at Paris, with the aſſent and conſent of the major part of the princes and lords, as well as of the chief men and commonalty of all the realm of France. Again, if the rights of ſuch kingdoms deſcended to women, the kingdom of Spain would long ago have devolved in right of a woman upon the Dukes of Lancaſter and York, inaſmuch as thoſe two Dukes married the two daughters of the King of Spain, and yet that crown was far from devolving upon them, or either of them. But after the death of Peter, King of Spain, father of the ſaid daughters, the chief men and the commons of the ſaid kingdom exalted Henry, baſtard brother of King Peter aforeſaid, who had been legitimated by the Pope, to be their King.

It appears, moreover, from the order of Holy Scripture, that God forbad to women ſupreme power over men, by reaſon of the tranſgreſſion of the firſt woman, when He ſays, "Thou ſhalt be under the power of the man, and he ſhall bear rule over thee." Wherefore a law or cuſtom which gives to a woman by title of ſucceſſion the government of a kingdom, eſpecially of ſuch a kingdom as hath no ſuperior upon earth in things temporal, is deſervedly called a corruption rather than a law or a cuſtom.

Again, many duties are incumbent upon Kings of England in virtue of the kingly office itſelf, which are inconſiſtent with the nature of woman, and Kings of England are inſpired with certain powers by ſpecial grace from heaven, wherewith Queens in that country are not inſpired. A King of England, for inſtance, is held by authority of the Church to be a *perſona mixta*, and accordingly, during the vacancy of biſhoprics, the Kings there confer upon whom they will all vacant prebends of cathedral churches ſo vacant, and make thoſe collations by virtue of their royal briefs, by which briefs the ſaid prebendaries are, in point of law, ſufficiently inſtituted and inveſted in their prebends, and in the ſaid cathedral churches are, by virtue of ſuch royal briefs aforeſaid, incorporated as canons; and thus in this and in divers other caſes which might be ſhown, a King of England may exerciſe the functions of a biſhop, which power is not fitting for women, nor ever was granted to a woman. Likewiſe the Kings of England are, by reaſon of the kingly office itſelf, ſubject to many obligations which are oppoſed to the nature of women. The Kings of England in their very anointing receive from heaven ſuch infuſion of grace that by touch of their anointed hands they cleanſe and cure thoſe who are infected with a certain diſeaſe, commonly called the King's evil, who are ſaid to be otherwiſe incurable. Epileptics alſo, and perſons ſubject to the falling ſickneſs, are cured by means of gold and ſilver devoutly touched and offered by the ſacred anointed hands of the Kings of England upon Eaſter day, during divine ſervice (according to the annual cuſtom of the kings of England); even as by means of rings made of the ſaid gold or ſilver, and placed upon the fingers of ſuch ſick perſons, the ſame hath been in many parts of the world by frequent trial experienced; which grace is not conferred upon queens, inaſmuch as they are not anointed on the hands. Moreover, the queen is anointed on a lower part of the head than the king, in token that ſhe hath a ſuperior, and is not anointed on the arms like a king, becauſe ſhe is not to exerciſe power of her own will, nor bear the ſword, as the king doth; and not without cauſe, as ſaith the Apoſtle, ſeeing it would be againſt the rule of nature for a woman to mix herſelf up with the buſineſs of a man. Moreover, it might happen that ſuch a queen ſhould, through heat and raſhneſs of love, take for her huſband a man not nobly born, or perhaps of mean deſcent, whoſe children would afterward fill the royal throne, and in the lit of noble perſons of the royal name and lineage, would wield the ſceptre of the realm, a thing too lamentable to hear, and far more horrible to ſee.

Wherefore it hath never been ſeen or heard of, that in any kingdom, and above all, in

England, a woman, however near in degree, ſhould, while male heirs of the royal line ſurvive, take the crown of the realm, or convey it by any title of hers to her ſucceſſors. Nevertheleſs, it is fit and proper that upon ceſſation of iſſue male the ſon of a woman neareſt in the royal line, ſo as he be ſprung from a father of noble birth, and by his own character be worthy of the honour, ſhould, upon ſuch a caſe ariſing, be raiſed by the Lords and Commons of the realm to the ſupreme dignity of king, before all other more remote deſcendants of the royal blood.

IV.

HERE followeth the third anſwer, corroborated by law of Holy Church.

King Henry V., and after him his ſon King Henry VI. yet ſurviving, ſucceſſively anointed and crowned kings of the kingdom of England, reigned *bonâ fide* in peace without contradiction or reclamation of any, by common conſent and aſſent of all the realm, for ſixty-three years and more continuouſly, a period of time which includes the longeſt preſcription and more, preſcription againſt the Roman Church only excepted. Since, therefore ſuch a title by preſcription is, by the law of the Church, ſufficient to acquire dominion, it follows that King Henry VI. is, by the law of the Church, ſufficiently entitled to the kingdom of England.

V.

AFTER the death of Henry V., the moſt Chriſtian Prince, Henry VI., his ſon and heir, by juſt and rightful title of his parents, ſucceeded to the rights of the crown and kingdom of England; and while of tendereſt age was, without a diſſentient voice, yea rather with unanimous applauſe, anointed and crowned king of that realm. To him alſo, while ſtill at his mother's breaſt, and not yet crowned, the aforeſaid Edmund, Earl of March, of his own accord did liege homage with all humility as to the heir of the ſaid Henry V., and his ſovereign king and lord, and with all joy and all poſſible ſpeed haſtened to perform the ſame. Afterwards, however, when the ſaid Earl Edmund had been taken away from this life without heirs of his body, Richard late Duke of York father of that Edward, and nephew of that Edmund—that is to ſay, ſon of his ſiſter Anna, as his neareſt heir, in the Chancery of the ſame King Henry VI., according to the manner of that Court, ſought and obtained from the king, as from his ſovereign lord, that poſſeſſion of the ſaid Earldom ſhould be adjudged to him as the neareſt heir of Edmund himſelf. And for ſame he did liege homage as to his king and ſovereign lord; and afterwards, under his indentures, ſigned with his ſeal of arms and ſign manual, bound himſelf to his ſaid King Henry VI. for the faithful conducting and bearing himſelf in the office of his Lieutenant in

France, which office alſo he long performed; in which writings he called the ſame Henry his ſovereign lord, and King of England and France. And afterwards having from the parts of France returned to England, under like written indentures, ſigned with his ſeal of arms and ſign manual, he bound and pledged himſelf, in every poſſible mode, way, and form known to the law, to ſerve faithfully his ſame ſovereign lord in the office of his Lieutenant in Ireland, until it ſhould be the king's pleaſure to recall him; and the ſame King Henry VI., in thoſe his writings, he always acknowledged and named as his ſovereign lord, and King of England and France.

Again, when King Henry was attacked by illneſs, ſo ſevere as to be incapable of attending perſonally to the government of the realm, the ſaid Richard, Duke of York, in writings marked with his ſeal of arms and ſign-manual, of his own free will ſtyled the king his ſovereign lord, and King of England and France; and in open Parliament during the continuance of that ſickneſs took upon himſelf by authority of the ſaid Parliament, the office of Protector and Defender of England, the whole body of the realm being repreſented in that Parliament, according to the laws of England; and in full Court of Parliament called (as is of record) the ſaid moſt Chriſtian prince Henry VI., King of England, and his own ſovereign lord, and that at a time when the king himſelf, by reaſon of the infirmity aforeſaid, could not have compelled him out of fear to do the ſame. Alſo, the ſame Richard repeatedly ſwore upon the ſacred Body of Chriſt, ſacramentally ſeen, that he would ever be a faithful ſubject and liegeman to the ſame his King Henry VI., and to the beſt of his power would defend and aſſiſt him, and would act with all his ſtrength for the preſervation and increaſe of his royal ſtate, and for the confirmation of this oath he received the Body of Chriſt; with the which oath he bound more cloſely and ſtrongly than with any earthly bonds, not his body only, but his ſoul and his honour. This Edward alſo his ſon now uſurper of the kingdom, ſolemnly ſwore in like manner upon the Croſs of Canterbury, in preſence of all the clergy of the whole province of Canterbury, then convoked in the church of St. Paul in London, that he would ever honour his ſovereign lord, King Henry VI. and would take him for King of England and his ſovereign lord, and would humbly obey him as his king all the days of his life; and afterwards in open Parliament repeated and renewed in like manner this his oath. From which premiſes it is clear to all who view the matter in a true light, that, if the progenitors of this Edward now uſurping the throne had had from the beginning (as they never have had) any right to the crown and realm of England, yet from that right, by promiſes and affirmations confirmed under their ſeals and ſigns-manual, by voluntary renunciations, both expreſſed and implied, affirmed before the higheſt authorities, namely, in Parliament and in the convocation of the clergy, and by ſolemn oaths voluntarily made, they have fully and abſolutely withdrawn. And ſo if they had had the right, as they had not, yet hath every way of ſeeking it been, by their own proper act, cloſed againſt them, and the ſaid right in law ſtands annihilated and extinguiſhed.

A PASSAGE FROM THE TRACT ENTITLED

A DEFENCE OF THE TITLE OF THE HOUSE OF LANCASTER.

Out of S^r. John Fortefcue's defence of the title of the houſe of Lancaſter, as followeth.[1]

FOR the more declaration of the truth it is to be had in mind that Edward was occupying the croune of Englande by a pretended title, ſaying that he is deſcended thereunto by the right of a woman called Ladie Phillip, daughter, as he ſaieth, to Sir Lionell of Anwerp, elder brother to Sir John of Gaunt, of whom is lineally deſcended thereunto the verie true Chriſtian Kinge Henrie the ſixt. The which Edwarde hathe no right to the ſaide Crowne by the above ſaid Phillip; For it is playnely founde in the Cronicles of Fraunce that the ſaide Dame Phillip was conceaved in adultry, and gotten upon the wife of the above ſaide Lionell by on Sir Jamis Audeley Knight, which was ſteward of the houſeholde of the above ſaid wife of Sir Lionell; the which Sir Lionell being abſent by the ſpace of a yeare and a halfe from his wife, before the birth of the ſaide Dame Philip. Which Sir James afterwarde for that offence was beheaded, and Sir Lionell Duke of Clarence divorced by the Lawe from the ſaide Philip his Wife, and afterwarde wedded the daughter of the Duke of Millaine, and within that Country dyed, and in peax is buried not far from Millaine; and ſaw never his firſt wife Dame Phillip after with his eyne. And alſo ſhe was exiled into Irelande with her ſaid daughter Philip; which Philip had never foot of lande of the Duchy of Clarence, nor bare the armes of Englande, ne non that diſcended from her, as by there right they ſhold have done if ſhe had bene the daughter of the ſaide Lionell. Which Sir Lionell when he was dead, and the write called *diem clauſit extremum* weare ſente out to all the ſhires of Englande, they weare all returned that the ſaide Sir Lionell died without iſſue of his bodye lawfully begotten. Therfore Kinge Edwarde the thirde toke all the lande of Sir Lionell

[1] From Sir Thomas Phillipps's MSS., No. 13,578.

into his owne handes, and at a parlemente not long after, declared the cauſe above ſaid to all his people. In the which parlemente, by the advice of the Lordes and Comons of Englande, he entailed the Croune to the heires males. And for a perpetual witnes that his daughters weare agreed unto the ſame, they cam all unto the open parliament in there mantels of eſtate embroidred with the armes of Englande and there openly diſclaimed and renounced from them all the right and title they had or might of poſſibility have to the crounes of Englande and France. In record wherof they let fall there mantels there, and departed oute of the parlement in there gites.[1] So this is a ſufficient declaration that the above named Kinge Edwarde that now occupiethe the Croune, hathe no right therunto.

[1] Gite, a gown.

THE DECLARACION MADE BY

SIR JOHN FORTESCU KNYGHT

UPON CERTAYN WRYTINGES SENT OUTE OF SCOTTELAND

AYENST THE KINGE'S TITLE TO HYS ROIALME

OF ENGLOND.

THIS refutation by Sir John Forteſcue of his own arguments, to which he was compelled by Edward IV. as a condition of the reverſal of his attainder, is now printed for the firſt time.

It was written after his pardon and reſtoration to the Privy Council in October 1471, and before the reverſal of his attainder, which bears date in the ſame month of 1473. He here ſtyles himſelf "The King's Liege Man and of his Councell," and in his petition refers to this piece as "the large and clear writing" by which he had diſproved all the arguments againſt the King's title.

We have ſeen moſt of thoſe arguments in the foregoing pages of this volume, either in "the Latin book," which now forms or is included in the ſecond part of his long treatiſe, "De Naturâ Legis Naturæ," or in the fragments of the loſt Tracts.

The manuſcript copies of the Declaracion with which I am acquainted are as follows, the firſt three being in the Britiſh Muſeum—

1. Harleian MSS., 1757, folio, on paper of the cloſe of the ſixteenth century.

2. Harleian MSS., 537, ſmall 4to., on paper of the ſeventeenth century. This MS. breaks off abruptly before the middle.

3. Royal MSS., 17. D. XV., thick 4to., on paper of the ſeventeenth century.

4. Lambeth MSS., 262, f. 129.

5. Holkham MS., in the poſſeſſion of the Earl of Leiceſter.

Their variations are but ſlight. I have in general followed the Royal MS., as copied by Mr. Richard Sims, and collated with the two other Muſeum MSS., but have ſupplied many illegible words and omiſſions from a tranſcript of the Lambeth MS., made for this work by the Rev. J. O. Payne. For a collation of the Royal MS. with that at Holkham, I am indebted to the Rev. Canon Collyer, and to the permiſſion of Lord Leiceſter.

The declaracion made by John ffortescu knyght
Upon certayn wrytyngs sent oute of Scotteland
Ayenst the kyngs title of the Roialme of England

The introduccion of the mater

A lernyd man in the lawe of this lande come late to the same sir John ffortescu seiyng in this wise Sir while ye were in Scotelande with Henry somtyme kyng of this lande in dede though he wer not so in right There ware made there many wrytyngs and sent hedyr by which was sowed among the peple maters of grete noyse and infamie to the title which the kyng oure soveraigne lorde Edward the iiij hath and thos hadde to reigne upon us And truly for the contryvynge and endytynge of thos wrytyngs have be ascribed to yow in the opinion of the people consideringe that ye were the chief counsellor to the said late kyng ffor which cause hit is thought to many right wyse men And also to me and other of your ffrendes that it is nowe your dutie And also ye beth bounde in conscience to declare your selfe herein And also the qualitees and effectes of all such wrytyngs as ye were thoo pryve unto such wyse as thay tourne not hereafter to the kyngs harme And that ye doo this by wrytyng such as may come to the knowleche of the peple also clerely as dyde the sayd wrytyngs sent oute of Scotte lande of which many yete remaynen in the handes of full evyll disposed people that prively redene and reden thaym to the kyngs dyshonour and disclaundre of his said title Wherunto ffortescu sayd in the fforme that foloweth

ffortescu agreeth hym to make such declaracion as is desired

My sir verray good and trew frende I thanke yow hertely of your sadde and faithfull counsell which I shall folowe also ferre as shalle possible to me ffor I knowe undoutedly that it reason I doo as ye avyse me But yet it is so that there wer many such wrytyngs made in Scotelande of which sum were made by other men than by me Wherunto I was nought prevy But yet the bryngers of tham into this lande said they were of my makyng wenynge therby that thay shulde been the more favoured There were also other wrytyngs made therby the said late kyngs counsell and sent hedyr to which I was not well willynge But

THE DECLARACION MADE BY JOHN FORTESCU, KNYGHT, UPON CERTAYN WRYTINGES SENT OUTE OF SCOTTELAND, AYENST THE KINGES TITLE TO THE ROIALME OF ENGLOND.

LERNID man in the lawe of this lande come late to the ſame Sir John Forteſcu, ſayinge in this wiſe, Sir, while ye were in Scotelande with Henry ſomtyme king of this lande in dede, though he wer not ſo in righte, there ware made there many wrytinges, and ſent hedyre, by which was ſowen amongs the peple matier of grete noyſe and infamye to the tytle whiche the Kinge oure ſoueraigne lorde Edward the fourth hath, and thoo hadde to reigne vpon us. And truly ſyr the conceyvinge and endytynge of thoo wrytings haue be aſcribed to you in the opynioun of the people, conſiderynge that ye were the chief Counceller to the ſaid late Kyng. For whiche cauſe hit is thought to many right wyſe men, and alſo to me and othere of youre frendis, that it is nowe youre dutee, and alſo ye beth bounde in conſcience to declare youre ſelfe herein, and alſo the qualities and effectes of all ſuch wrytinges as ye were thoo pryve unto, in ſuch wyſe as thay turne not hereafter to the Kinges harme. And that ye doo this by wrytings ſuch as may come to the knowlache of the people alſo clerely as dyde the ſayd wrytinges ſent oute of Scotelande; of whiche many yete remaynen in the handes of full evyll dyſpoſed people that pryvely[1] rowne and reden thaym to the Kynges dyſhonour, and diſclaimdre of his ſaid title. Whervnto Forteſcu ſayd in the forme that foloith

The introduction of the matier.

My verray good and tru frende, I thanke you hertely of your ſadde and faithfull councell, which I ſhall folow alſo ferre as ſhalbe poſſyble to me; for I knowe vndoutedly that it ys reaſon I do as ye move me. But yit it is ſo that there wore many ſuch wrytinges made in Scotelande, of which ſum were made by other men than by me, wherunto I was never pryve. But yet the bryngers of tham into this lande ſaid they were of my makyng,

Forteſcu agreith him to make ſuch declaracioun as is deſyred.

[1] To rowne, is to whiſper. To rede, is to ſpread abroad.

hopynge tharby that thay ſhulde have been the more favoured. There were alſo other wrytings made ther by the ſaid late Kyngs Councell, and ſent hedyr, to whiche I was not
f. 312. well willynge, but yet thay paſſed by the more partie of that Counceill. And over this there were made wrytinges there, ſome by myne aſſente, and ſom by my ſelfe. In all ſuch wrytinges it ſhall nede that my declaracions were dyuers according to my merites in makinge of them. Nevertheleſſe I wollde fayne in all thoo wrytinges declare the effectes of thayme after my reaſon and larnynge, yf I myght have the copyes and doubles of thayme, which I have not, nor have ſeen any minute of them, ſythen I come into Englande. And therefore I pray you hertely to gete me ſome of the ſayd wrytings or copies of theym yf ye can do ſo; and els that ye woll declare to me ſuche of the matiers as ye can now remembre. Wherunto the ſaid lernyd man then ſaid in this wyſe.

The Lerned Man.

This article concernyth Edmond Crochebake.

Syr, I haue none of the ſaid wrytinges nor yet any ſayd copy of theym; but yit I remembre me well of dyuers maters wryten in ſome of thayme; of whiche oone mater is this. Kynge Henry the thirde hadd two ſonnes, of which the elder, as the wryting ſaith, was called Edmunde, and ye yonger Edwarde. And becauſe that Edmunde hadde a grete difformyte in his bake, he was called Edmunde Crochebak. And by that cauſe the Kynge wold not that he ſhulde be Kynge of Englande after hym; but wolde tharfore that his yonger ſonne ſhulde ſuccede hym in his Realme; and by that cauſe made the ſaid Edmunde

Henry iii. acceſſit, 1216. Edward 1ſt, 2nd, 3rd, Richard ii. Henry 4th, 5th, 6th, Edward iv., 1461.

Erle of Lancaſtre, Leyceſtre, and Derby, and cauſed his ſonne called Thomas of Lancaſtre, to be Erle of Lyncoln by maryage, and gaffe to him the Erledome of Hountyngdon, and many other gret lordſhippes; and made the Countee of Lancaſtre to be a countee Palatyn, to thentent that his ſaid elder ſonne ſhuld be the leſſe in the daunger of his yonger broder when he were Kynge. Off whiche Edmunde was afterwarde deſcended Blaunche, doughter to Kynge Henry, the fyrſte Duk of Lancaſtre, ſonne to Henry, ſeconde ſonne to the ſaid Edmunde. For the forſaid Thomas dyed with oute iſſue. Whiche Blaunche was afterwarde wedded to John the thirde ſonne to Kynge Edwarde the thirde; which John and Blaunche hadde iſſue Henry afterwarde Kynge of England, called Kynge Henry the fourth; which hadd iſſue Kyng Henry the fyfte; and he had iſſue Kynge Henry the ſixt, which by this meane was nexte heire to Kynge Henry the thyrde. Syr was this your wrytinge.

f. 312 b.

Fortejcu.

The anſwer to the forſayd article.

For ſothe ſyr, nay, nor I was neuer aſcentynge to the wryting thereof.[1] And yit I was

[1] The following paſſage, included in James's "Excerpta et Fortefcue," is part of the writing which he here denies to have been his. The evidently Scotch ſpelling can hardly have come from an Engliſh pen:—

"King Henry the thyrde had iſſew Edmonde that was called *curtus*, and Edwarde; which Edmonde for his deformitie was put fra his ryght, and the ſaid Edwarde made King, and callit Edwarde the firſte 'with the long ſchankis.' And for peiſe the ſeide Edmunde gaif over to hym the Erledome of Lancaſtir, which is called the thyrde foot of the Croune."

gretely deſyred by my felowys in Scotelande, to haue made this wrytinge or othyer lyke therto, but I wolde not do it, be cauſe I knew veryly that it was vntrue; as it apperith vndoutedly by a Cronycle, called "the Cronicle of Saynt Albanes," in the which the wryter, as me thought, kept an ordre and a rule infallible. For he wrote every moneth, what the Kinge didd in every grete mater in that moneth; and what Ambaſſatours or other new thinge come vnto him; ſo as by lyklineſſe, he might not erre in his Cronicling. By whiche Cronicle hit apperith in what day and monith Edwarde ſonne to Kynge Henry the thyrde, was borne; and howe in the next yere after that, at a day and place ſpecyfied in the ſame Cronicle, the Quene was delyvered of a doughter; and in an other yere after that of an other doughter; f. 313. and tellith there names; and how after the byrth of tho twoo doughters, ſhe was delyvered of the ſaid Edmunde. By which Cronicle hit is clerly ſhewyd that the ſaid Edward was four or five yere elder than his forſayd broder Edmunde. And in the Cronicle called "Flores Cronicarum," which is holde of a greater auctorite than eny other Cronicle wryten in this lande, the ſame Edwarde is ofte tymes callyd *Edwardus Primogenitus Regis Angliæ*. Wherthorough, and by many reaſons whiche I now leve for the ſchorteneſſe, I was indubitably lerned that the ſaid Edwarde was the elder brother. Wherfore I wolde not aſſent to that wrytinge made in Scotelande, nor ſe hit; but I ſaid to thaym that moved it that it was untrue.

Edward elder than Edmund.

The Lerned Man.

Truly ſyr, than ſaid this lernid manne, I am righte glade that I haue harde you ſay thus, for by this declaracion the Kings title ſhalbe more clere in the oppynion and knowledge of the people in that matier, than it ſhulde haue bene yf the ſaid vntrue wrytinge had neuer ben made; and therfor I now deſyre to haue communycacion with you upon ſuch other maters as I remembre were alſo wryten oute of Scotlande; Truſtynge that after your declaracion made in theym thay ſhalle alſo turne vnto the Kinges good; how be it thay were not made to that entent.

The lerned man agreeth him well to the ſaid declaracion.

Item. The Lerned Man.

Syr, ye wrote in Scotland, that the preſent kynge our ſoverayne lord claymeth this Roialme by diſcent from two women; which Roialme is not enherytable by any woman as ye ſaid. And in proffe of your entent ye wrote howe Edmunde Irenſyde elder brother to ſaynt Edwarde the Confeſſour, hadd iſſue a ſonne; whiche hadd iſſue a doughtere weddyde to Malcolyne Kynge of Scottes, now canonized, and callid Saynt Margarete; of which kynge and Margarete haue bene ſithen dyſcendide all the kynges of Scottes; which not withſtondynge, after the dethe of the ſaid Edmunde, Sainte Edwarde reyned in this londe peſeably all the lyffe of the ſaid Saint Margarete with oute eny clayme made vppon him, by hyr, or by her huſbande, and with outen that eny of ther heirs have claymed this londe at any tyme ſithen; whiche clayme thay wold haue made yf it hade bene inheritable by eny woman, or by the iſſue of a woman. And alſo Saint Edwarde that was ſo rightwos, and

This article concerneth Edmonde Irenſyde f. 313 b.

tharfor is now a ſaynt canonized, wolde not haue kepe this londe from the doughter of the ſonne of his elder brother yf ſhe ought to haue hadde it by inherytaunce. Syr, this wrytinge importith two things, oone is euidence that the corone of this londe is not inheritable by a woman; the ſecunde is that if it be inheritable by a woman, than the Kynge of Scottes oughte to haue it. How ſore the two maters bene a yene the Kynge and his title, your reaſon feeleth well ynough; and therfor they nedyne right playne and open declaracion, where in I wold fayne here you.

Forteſcu.

Here is diſproved the fyrſt poynt that the forſayd article importhe. fo. 314.

My frend, the fyrſte poynt whiche ye ſaye that the forſayd wrytyng importith, and ſhulde be euidence, that the corone of this londe is not inheritable by a woman, may not make eny ſuche euidence; for hit apperith in the Cronicules of this londe, and ſpecially in Policronicon, the ſixth boke, in the twenty-eighth chapter, that Edgare Adelynge brother to Saint Margarete, was alyve and in Englonde at the time of the deth of Saynt Edwarde, and longe after; wherfor[1] Saint Margarete in the lyfe of the ſaid Sainte Edwarde, might haue hadd no title to the corone, though it had been diſcendable to heires females; wherfor here noun clayme, or the poſſeſſion of Saint Edwarde proven noo thing, or makyn eny euidence for the right of ſucceſſion of women in this Realme, or in any other.

Forteſcu.

And here is diſproved the ſecund poynt of the ſame artiele.

And as to the ſecunde poynte whiche ye ſaye that the forſaid wryting importeth, that is to ſay if this londe be inherytable be woman, than the Kinge of Scottes ſhuld haue right therto; that mater may be clerely dyſprouede be many reaſons, of which oone is this. The ſayd Edmunde Ireneſyde was a baſterd goten by Kynge Ethelrede, otherwyſe called Adelrede, vppon his concupyne called Algeua doughter to oone Egelbrede, longe tyme be fore that the ſaid Ethelrede was wedded to Emma doughter of Richard Duke of Normandy, by whom he hadd iſſue Saynte Edwarde the Confeſſour; as it clerely apperith al ſo well by the Cronicles wryten by Petrus Pictauenſis,[2] and by frere Nicholl Tryvet, whiche I haue ſeen and rade ſy then I come into the londe, as by other Cronicles of which I am late enformed and hope to ſe thayme ayene within a fewe days. Wherfore the children diſcendid of the ſaid Edmunde Irenſyde may not by any lawe inherete the Roialme of Englond or eny other lande as heires to the ſaid Ethelrede, or to any of his Aunceſtries. And though he hadd bene mulier,[3] as he was not, yet the Kynge of Scottes may not clayme this roialme by reaſon of him, as it ſhalle clerely appere by the reaſons that folowen.

f. 314 b.

[1] The two Harleian MSS., as well as the Lambeth and the Holkham MSS., read here, between the word "wherfor" and the words "might have hadd," "*Saint Edwarde in the life of the ſaid Edgare.*" Such a reading, however, is hardly applicable to the reſt of the ſentence.

[2] An Engliſh Chancellor; he died about A. D. 1200. For his works ſee Watt's Bibliotheca Britannica.

[3] i. e. legitimate.

Forteſcu.

How Edmond Irenſyde gave this land to

Fyrſte it was ſo, that after many batels hadde betwene kinge Knoght and Edmunde Irenſyde, thay accorded to determyn ther werre by a ſinguler baytale called duellum, of thaym ſelfe. In which batelle when thay wer booth werry, accorde toke betwene tham that this lond ſhuld be departed between them bothe for terme of thayre lyues, and he that overlyved ſhulde than haue the hole to him, and to his heires euermore. By force of whiche accorde thay bothe kepte and occupied this londe in common alle the lyfe of the ſayd Edmunde Irenſide. After whoos dethe kynge Knoght kepte and occupied the ſame lande ſole as kinge tharof by force of the ſayd accorde, and hadd iſſue Harold Harefote, and Harolde Hardknoght, and died peaſibly ſeaſed tharof. Aftere whos dethe his ſaid two ſonnes hadd and enjoyed this lande peaſabely, oone after that other, alle the days of thaire lyues, and died with oute iſſue. Wherfor this lande was than with outen eny kynge. By which occaſion thay drove hens alle the Danes, and choſe Saint Edwarde, then beynge in Normandy with his moders kynne, to be thaire kynge, and than ſent for him, and made him kynge of Englande; in which aſtate he contynued peaſably all the deys of his lyfe. What ryght than might haue remayned in th'iſſue of Edmonde Irenſyde, though he had been mulier, ſethen he hadd graunted his Roialme to the Daynes in fee for euermore; be force wherof thay kepte and enjoyed it peaſibly three generacions, and than loſte it for defaute of heires? How than might eny of thiſſue of Edmunde Irenſyde males, or females, clayme this londe which the ſame Edmunde had youen to the Daynes, which by force f. 315. tharofe, and alſo by conqueſt, kepte it peaſably into thare fourthe generacion? Suffyſith not than this mater to exclude and barre the Scottes, yf thay wold clayme this londe by the heires of Edmonde Irenſide? By whom the Daynes have greater colour to clayme it, than they, and yet they haue no maner of ryght tharto, as it ſhall well appere by a matier that hereafter ſhall folow. Butt yet I ſhall ſhew fyrſte another mater by which the heires of the ſaid Edmond beth excludid and barrable to clayme this lond as couſyns to Saint Edwarde though he hadd be mulier, which is this.

Forteſcu.

The ſeconde Argument made ayenſt the heires of Edmonde Irenſyde.

The lawe of Englond is ſuch, that if a man havinge a brother of halfe blode, be ſeaſed of any londe in fee ſimple, and dye with out iſſue, that lond ſhall neuer diſcende to his ſaid brother, nor to his iſſue, but it ſhall rather eſchete to the lorde of whom it is holde, that is ſtraunge to that blode, and to his heires for evermor. Than ſethen Edmond Irenſyde, though he hadd been mulier, and Saint Edwarde, were brotherne but of halfe blode, that is to ſay, Edmunde was iſſue to the forſayd Alyſone, and Saynt Edwarde was iſſue to Emma doughter to the Duke of Normandy, the ſaid Edmonde, nor eny of his iſſue might neuer ſuccede, nor bee heire to Saynte Edward. Which mater he well conſideryng, and that he

hadd none other kynne which ought to enherete his roialme after him, willyd that William Duke of Normandy his next cofynne in his moders fide, might fuccede him in his Roialme of Englonde. Wherunto Harold fonne of Erle Godwyn, and the g etteſte lord of Englonde, and alſo the more parte of all the lordis ſpirituelx and temporalx of this londe, were welle aggreyd, and promytted that it ſhalbe ſo. And the ſame Harolde made lyke promys in Normandy to the Duke him ſelfe, but yet after the dethe of Saint Edwarde he abated, and ocupyed this Roialme hym ſelfe as kynge therof. For which cauſe the ſaid Duc of Normandye come ouer with a greete hooſte and conquered this londe. Buth not all the heires of Edmonde Irenſyde, though he hadd be muliery,[1] but yet half a brother of Saynt Edwarde, barred for evermore by the lawe of Englonde to clayme this Roialme, or any londe as heire to Saynt Edwarde to whom theire aunceſtre was brother but of half bloode?

f. 315 b.

Forteſcu.

The thyrd Argument made ayenſt the forfayd heyres.

Item it is wryten in the boke of Judicum the eleventh Chapitre, that Jepte ſumtyme Jugge, and gouernour of the children of Iſraell, juſtyfied their poſſeſion in certayn landis whiche thay hadd goten by conqueſte of the children of Amon, by cauſe thay hadd k pte and occupyed the ſame landes peaſably after thaire conqueſt by the ſpace of three hundred yere; how moche more lawfully than may the Kynge our ſouerane lorde, whos p ogenitours and him ſelfe *bonâ fide* haue been peaſably poſſeſſed of this londe more than four hundred yeres, juſtyfie his poſſeſſion tharin ayen the forfayd Daynes and Scottes yf thay wold clayme hit by any title grawen to thaym by Edmunde Irenſyde, or eny other man be fore the Conqueſte? And in lykewyſe a yen the Saxones, Romayns, and Brytons, which in olde days haue been lordes here, the poſſeſſioun truly of four hundred yeres, excedith gret ely the title of preſcripcion uſed in eny Roialme of the world. And yet is preſcripcion oone of the ſtrengeſt titles auctoryzed by any lawe. Is not nowe the forfayd wrytinge maſſe in Scottelande concernynge Edmonde Irenſyde thoughe he hadd be mulyer, clerely provede of noone effecte? And that it maketh noon euydence a yen the Kyng our ſouerane lorde, but that the kynges title by occaſion of yt, and by reaſon of this declaracion, is more clere, and ſhalbe more openly knowen than it ſhuld haue been if that wrytinge hadd neuer be made? Wherthorow it turneth all to the kings good, though the vtterer tharof ment not that it ſhuld haue doone ſoe.

f. 316.

The Lerned Man.

The conſyderacion which ledde Kinge Henry to make accorde with Fraunce.

Sir, than ſaid this lerned man, ye wrote alſo while ye were in Scottelande that Kinge Henry the Fifth beinge lerned by wyſe and connyng men, that he might not have the

[1] Muliery, i. e. legitimate.

Roialme of Fraünce by the title of a woman, that is to ſainge by the title of quene Iſabell that was doughter to the kynge of Fraunce, and ſyſter to three kinges that reyned ther after the deth of hir Fader, lefte for that cauſe that title and clayme; and alſo the ſtile and name of Kynge of Fraunce, which he hadd uſed many yeres byfore, and accorded with Charles the kynge of Fraunce to wedde his doughter Kateryn, and dide ſoo. And vpon the treaty of that maryage accorde toke betwene the kynges by thaſſent and counſell of the more partie of the Doſeperes,[1] and three eſtates of that londe, that the ſaid Kynge Charles ſhuld haue and enjoy peaſably the Roialme of Fraunce, with the dignitie, ſtile, and name of Kinge of Fraunce, all the dais of his lyffe; and after his deceſſe the Roialme of Fraunce ſhuld remayne and goo to the ſayd Kynge Henry and to his heires kynges of Englonde for euer more. And that the ſame Kynge Henry (and his heires) ſhuld be Regent of Fraunce, and called *heres et Regens regni Franciæ* all the lyfe of the ſayd Kynge Charles. Whiche accorde, and all thynges conteyned in hit was affermed and made ſure as well by the three eſtates of Fraunce with th'aſſent of the moofte partie of the Douſpers, as by a parlament holden in Englonde the ninth yere of the ſaid King Henry. By force and cauſe of whiche accorde the ſame Kynge Henry lefte the name and ſtile of Kynge of Fraunce in all his wrytings, and was called *Rex Angliæ*, *heres et Regens regni Franciæ*, in his patentes and wrytings, all the dais of his lyff; and ſo was his ſonne called, after him all the lyfe of the ſaid Kynge Charles. After whos deth the ſame ſonne was in Parys crouned Kynge of Fraunce, beynge there preſent the more partie of the lordes of Fraunce that were not at werre with the ſaid Kynge Charles the day of his dethe; which lordes all aſſented to that coronacion. By which wrytynge ye entended to prove two thinges; oon is this, that Kynge Henry the fifte vnderſtode that the Roialme of Fraunce was not inherytable by the title of a woman. The ſecunde is that Henry ſonne to the ſaid Kynge Henry hadd right to the Roialme of Fraunce by reaſoune of that accorde, and not our ſouerayne lorde Kynge Edwarde the fourth. f 316 b.

The Lerned Man.

Syr, me thinketh that your ſaid wrytinge may not prove any of thes ſaid two poyntes. For as to the fyrſte poynte, the levinge of Kynge Henry the fifte his title of the Roialme of Fraunce may not prove it, nor be evidence to the profe of hit; for he was not next heire to the forſaid quene Yſabell, by whom we thoo hadd our title to Fraunce, for Edmunde, at that tyme Erle of Marche, was next heire to the ſaid quene Iſabell; that is to ſaynge he was ſonne to Roger, ſonne to Phillipp, doughter to Lyonell, ſonne to Kynge Edward the thirde, ſonne to the forſayd quene Iſabell. For which cauſe the ſaid Roger, fader to Edmond, was proclaymed heire apparaunt to Kynge Richard in his parlament holden at Weſtmynſter the

The diſtroccione of the fyrſte poynte of that conſideracion.

f. 317.

[1] The word is either a contraction of Duces et Pairs, or is put for douze Pairs.

twelfth yere of his reynge. To which Roger, and all ſo to Edmonde, the Kynge our ſouerayne lorde is next heire; for he is ſonne to Richard, ſonne to Anne, doughter to the ſaid Roger, and alſo ſuſter to the ſaid Edmond late Erle of Marche which is dede with oute iſſue of his body. And the forſayd Kynge Henry the fifte was ſonne to Henry, ſonne of Johne, yonger brother of the forſayd Lyonell. In which caſe he myght not be heire to quene Iſabell, and by the conſequens tharof he might not have hadd the Roialme of Fraunce, alle the while ther wer any iſſue of the ſaid Lyonell on lyve. By the whiche conſideracioun he lefte the name and ſtyle of kyng of Fraunce, and made the ſaid treatie, and not by the conſideracioun whiche ye imagyned on your ſaid wryting; for els he hadd had no colour of title to that Roialme. And therfor, Syr, me thinketh that now the forſaid fyrſte poynt is clerlye dyſprovede.

The Lerned Man.

The diſtroccion of the ſeconde poynte of the ſame conſyderacion.

And as to the ſeconde poynt of the ſame conſideracioun, ye knowe welle how that the accorde and title that grew tharby was goten by the coſtes, charges, and aventures of this londe fore the good and profytte tharof; which, I wotte welle, hath coſte this londe cc. M^l. li' and more. And ſythen Kynge Henry the fifte is now dede with oute iſſue, the title and right that grewe by that accorde is now holyche, and oonely yn the Kynge our ſouerayne f. 317. lorde, whiche is indubytable his next heire maſle. So that now he hath title and right to the Roialme of Fraunce, as well the title that grewe of that accorde, as by his olde tytle whiche he and his progenitours, heires to the forſayd quene Iſabell, have long hadd, and which his forſaid noble aunceſtre, Edmond Erle of Marche hadd before the ſaid accorde, and at the tyme of the makynge tharof, and his heires alway ſythen have hadde, as well in the lyves of the ſayd Kynge Charles, Kynge Henry the fifte, and of his ſonne, as ſythen, not excludede by the forſaid accorde to have and clayme it as next heires to quene Iſabell. So that in the lyfe of ſaid Henry ſonne to Kynge Henry the fifte, the Kynge our Souerayne lorde hadd as verely right to the Roialme of Fraunce, and ſhulde have hadd ayen the ſame ſonne yf he hadd been in poſſeſſion of that Roialme, as he nowe hath ayene kynge Lowys which occupyeth the ſame Roialme, and as his noble progenytours have hadd ayene the aunceſtres of the ſame Lowys, the forſaid accorde notwithſtondynge. Neuertheleſs his highnes hath now both titles, that is to ſaynge his auncient title, aunceſtrell, as next heire to quene Yſabell, and this new title that was gotene by the forſaid accorde. Is not nowe the forſaid ſecunde poynte as clerely dyſproved as the fyrſte, ſo that by the forſayd latter mater wryten oute of Scottelande thaire remayneth no more maner of evydence ayene the Kynge nor his title?

Fortescu.

Why Kynge Henry his

Syr, ye haue ſo clerly declared theffectes of the forſaid laſte wrytinges that it now nedith

not more declaracion made by me;[1] and I am right gladd to here of youe, and to vndyrſtonde by your ſaynge how grete nede the councell of the laſte Kynge Henry hadd to wryte ayene the title of the enherytaunce of women in kyngdoms; for els by that title the Kynge our ſouerayne lorde myght haue diſtroyd inevitably the title whiche the ſayd late Kynge hadd in the Roialme of Fraunce by force of the forſayd accorde, as ye haue clerely ſhewed. Alſo by that title the Kynge oure ſouerayne lorde was vndoutably inherytable to the Roialme of Englond byfore the ſame Kynge Henry, conſyderynge that he is deſcended of Lyonell the elder brother, and the ſame Henry was deſcended of Johne the yonger brother, as is be fore openly declared. O howe good lorde is Godde to the Kynge oure Souerayne lorde that now hathe yeven him thies bothe titles wherethorow his ſubgettes may fight for hym in his title for his roialme of Fraunce with oute any doute or ſcrople of counſcience; for by ſyde his auncien title, that Roialme is now al ſo clerely ſure to him and to his heires by the ſaid accor le, as all the councell of bothe Roialmes coude or yet canne make it.

councell wrote ayene the ſucceſſion of women in kyngdoms. s. f. 318.

The Lerned Man.

Than ſayd the lerned man, Truly Syr, me thynketh youe well deſpoſed in all theis maters hiderto, for in all wrytinge made by yourſelf ye haue confeſſed the trouthe and declared the cauſe why ye wrote ſo, wherin I cane aſſigne no defaulte in you. And in thoo thinges that wer wryten by other men ayenſte youre wylle, ye haue declared the qualites and merytes of thaym bothe truly and planely, to the Kynge's good and honour, as me thynketh; for whiche ye be worthy right grete thanke. But yet Syr, ye wrote oute of Scottelande oone matier which nedith Right gret and clere delaracion, for it ſownyth gretly ayen the Kinge's old title to his Roialme of Fraunce; and ſo it dydde when it was wryten ayenſt his title of this londe. Whiche matier is this; Ye wrote that no woman may ſuppremely reigne vpon man, for Gode ſaide to the fyrſte woman thiſe wordes, *Eris ſub poteſtate viri, et ipſe dominabitur tui.* Which wordes ſaid to hire, was ſaid to all the kynd of woman; as the wordes then ſaid by Gode to the fyrſt man wer ſayd to all mankynde. And ouer this ye wrote a boke in Laten, be whiche ye entendid to proue the ſame by many auctorytes, ſcriptures, and reaſons; wherin yf ye ſo declare yourſelfe, and the matiers of that boke, as the Kynge be not harmed by theyme, ye than acquyte you well, and do tharin to his highneſſe right acceptable and lovynge ſeruice.

Here is deſyred a declaracion ayen he boke of Laten and other wrytings made in Scotelaide. f. 318 b.

Forteſcu.

I wolde fayne do as ye move me, God knowyth, and right ſory that ever I wrote ſo, or labored vpon the makynge of that Laten boke. But yet the werke to whiche ye now deſire me were more conuenyent to another mans pen than to myne; for I haue wryten ſo much

Forteſcue dredith that the declaracion which

[1] Here the Harleian MS. breaks off.

is defyred of him wold be to his infame.

tharin to an other entent, as ye know welle, that yf now I do as ye move me, my worke tharin wyll ſown ſo lyke dowbleneſſe, that in the oppynyone of the people, and namely of ſimple men, I may tharby fall into infame of dowbleneſſe; and yf it be doon by another man he may haue no hurte be it, but he ſhall haue right grete worſhipp

f. 319

yf he do it conyngly. Wherfor I wold be right gladd, and helpe him tharin in alle that I coude, and honeſtely might do. Alſo Syr, ſithen thies maters to whiche ye ſtere me, concernen the right of ſucceſſion in kyngedoms, whiche is the gretteſt matier temporall in all the worlde, they oughten to be treted and declared by the mooſte profounde and gretteſt lerned men that can be goten tharto, and not by men of my ſimpleneſſe that haue not moche labored or ſtudyed in any faculte except the lawes of this londe, in which the ſtudientes lerne full lytell of the right of ſucceſſion of Kyngdomes. And alſo yf any thinge be wryten herein which may reaſonably be diſproued, that writinge wher it is diſproued, ſhalle for efye and helpe the oppynyon of all theym that haue wryten to the contrary entent. Wherfore I drede me ſore to wryte herein, knowynge myne inſuffycientie tharto, and that if it be not ſufficiente, men wolle ſay that I made it ſuche for to ſtrenght tharby my rather[1] wrytynges *Et ſic erit nouiſſimus error pejor priore.* Wherfor me thinketh the Kyng's highneſſe wolde be moved to commytte this werke to ſuch as beth more able and more prone tharto than I.

The Lerned Man.

The wrytinge that now is defyred may neuer be vnworſhippfull.

f. 319 b.

Youre wyſdome, Syr, conceyveth well how ſergeauntes and aduocates that been right worſhippfull men arguen dayly to prove the titles of thayr clyantes, and after that in a lyke caſe for another claynt thay arguen to the contrary entent, and beth not for that, nor ought to be blaymed. So alſo doone The Jugges in maters of gret diffyculte wherin thay beth alſo indifferent, as thay be, for ſuch diſputacion ys to thayme beſte meane to find the right in euery doubtous caſe. Gracian alſo that compyled the booke of the Lawe Cannon, called Decrees, in all his queſtyons which he maketh in the caſes whiche he puttith there, called cauſes, diſputith for eithir partie of euery queſtione. Thus doth Saynt Thomas[2] in Secunda Secunde, and in all his bokes where as he aſketh eny queſtions, and thus doone all the clarks that determyn eny matirs in ſcoles; for this ordre is no doubleneſſe, but argument and proof of conynge and vertue. And ſithen your wrytynges whiche ye haue made in the matiers in the whiche I now move you, were but arguments, and ye no Jugge, but a parcyall man, ſeruant to him for whos fauour ye made the arguments, and his cauſe is now expired, and he deed, ye may nowe honeſtly and commendably with oute eny note of blame argue to the contrary entent of that ye haue doo by fore this tyme yf ye finde reaſons and

[1] "Rather" here means earlier, as the comparative of rathe, early.

[2] St. Thomas Aquinas, one of whoſe works is ſo named.

groundes to do ſo. And alſo ye ben nowe bounde in conſcience and by right to do ſo, conſyderyng that ye be the Kyngs liege man, and of his councell, and founde in his noble grace alſo grete clemence and fauoures as euer dyd man ſithen he fyrſt reyned vpon vs; and perauentur yor olde argumentes and wrytynges mowe els turne and be occaſion to his harme, or to the infamie of the title be which he reigneth upon us; which I am right ſure ye wold not were ſo. And Syr, yf ye wryte as I move you to do, and than it fortune your wrytynge to be not of ſuche effecte as ye entende, which thinge me thyngketh ye drede gretly, The Kynge ſhall not be harmede tharby; for his highneſſe may than make other notable and connynge men to make better wrytinge tharin; wherin thay ſhall fynde leſſe diffyculte whan thay haue ſeen your wrytinges.

Forteſcu. f. 320.

Syr, youre reaſons and motyves beth ſo gret that yf I do not as ye move me I dred that men ſhall holde me ſelfewylly, and tharfor I wolle aſſay and do as ye deſyre me. The matier which ye ſay I wrote and is ſo gretly ayenſt the Kynge is this. I wrote how that me ſemyd no woman ought ſoueranly or ſuppremely to reynge vpon man. Which matiers I pretended to prove by the Juggementes which God gave vpon the firſte woman whenne ſche hadd ſynned, ſayngne to here thiſe words, *Eris ſub poteſtate viri, et ipſe dominabitur tui*, whiche been wrytten in the boke of Geneſis the thirde chapitre, and beth ſuch in Englyſhe "Thou ſhalt be vnder the power of man and he ſhall be thy lorde." Which wordes ſpoken to that woman was, as I thoo wrote, ſpoken to all the kynde of women, as the wordes tho ſpoken by God to the firſte man were ſaid to all mankynde. This matier ye now deſyre that I woll ſo declare, and alſo the matiers of a booke which I wrote in Laten to enforce myne intent herein, as the kynge our ſouerayne lorde be not harmed be theym in his titlis of Englonde or of Fraunce. Syr, as to the fyrſte poynte in whiche ye deſyre my declaracion, I hope to finde not difficulte. For our lorde ſayde not in his forſayd Juggement that a woman ſhuld be vnder the power and lordſhipp of all men, or of many men, but he ſayd indiffinytely or indetermynably that ſhe ſhulde be vnder the power and lordſhipp of man; which is true yf ſhe be vnder the power or lordſhippe of eny man. For logycions ſayne, *Quod propoſicio indiffinita eſt vera ſi in aliquo ſuppoſito illa ſit vera*, and by that Reaſoune ſhe is vndyre the power and lordſhippe of man yf in any kynde of ſubjecion ſhe be vndyr the power and lordſhippe of any man. Wherfore howe be it that thar beth many kyndes of lordſhippes called by dyuerſe names in Latin, as is, *Dominium Regale*, *Dominium Politicum*, *Dominium diſpoticum*, and ſuch other, yf a woman be vnder the power of man in oone of the kyndes of lordeſhippes, ſhe is vndere the lordſhipp of man. And that euery woman is vnder the power and lordſhippe of ſume one man, which is alle that ſhe is arted vnto by the forſaid Juggement in Geneſis, may not be denied; for euery woman is vnder the power and lordſhippe of the pope, whiche is a man, and he vicare of Criſte, God and man. And though

A woman is vnder the power of man while ſhe is vnder the Pope.

f. 320 b.

his power and lordſhippe were but ſpirituell, yet the beinge vndyr that power and lordſhippe is a beinge vnder the power and lordſhippe of man. Wherfore the forſaid texte of Geneſis, or eny thinge by me deduced therof, may not prove that a woman may not reigne in a kyngdome of whiche the kinge hath no foueragne in temporaltes, ſithen ſche abideth alway ſubget to the pope. And by the ſame reaſoune it may not hurte the kynge in his titles to his forſayd twoo Roialmes.

Forteſcu.

The argument made ayenſt woman in the Latten boke.

Item this matier is argued in the forſaid Latin boke in this forme. God commaunded, and by his juggement eſtablyſhed that euery woman ſhalbe vnder the power and lordſhippe of man; than, by the ſame commaundment and juggement he commaunded that no woman ſhalbe free or exempt from the power and lordſhippe of man; for, as I wrote there, *Precepto vno contrariorum eorum alterum prohiberi neceſſe eſt.* But a woman to reigne in a kyngdome of whiche the kingdome is ſubget to no man in temporaltes, is a woman to be fre and exempt from the power and lordſhippe of man; hit ſhall thanne neceſſarily enſue that no woman may
f. 321. reigne in any ſuche kyngdome; for it were ſuppremely and foueraynly to reigne vppon man; wherthorough ſhe wer thanne not vndyr the power and lordſhippe of man. This is the ſtrengyſt argument that is made in the ſaid boke by reaſoune of the forſayd texte of Geneſis. Wherfor yf this argument be clerely dyſtroyed, the fyrſte matier whiche ye deſyre me to declare is than clerely declared. Nowe truly I am right ſory that euer I made eny ſuche argument; for it is an informyle tale, and no kynde of ſilogiſme. Wherfor the minor is inpoſſible, and tharfor not true; and the conſequent, yf it might be callede a conſequent, is not neceſſarie. Wherfore this maner of Argument proueth no thinge.

Forteſcu.

Here is proued that no king is with oute foueravne in temporaltes.

The forſaid minor is this. A woman to reign in a kingedome of whiche the kinge is ſubget to noo man in temporaltes, is a woman to be free, and exempt from the power and lordſhippe of man. Fyrſte it nedyth that it be vndyrſtonde that alle that we ſpeke of kinge and kingedome in this diſputacion muſte be vndyrſtonde of Cryſten kynges, and thaire kyngdomes, though tharin we name thayme not ſo. Thanne thus ther is not, or may be, by poſſibilite, eny kingedome of whiche the kinge in temporaltes is ſubget to no man; for all kynges beth membres off holy Chyrche, of which our holy fader the Pope is Vicare to Cryſte as hede, ſaynge the Appoſtell *Omnis viri caput Criſtus eſt*, to whome alle the membres of the Chyrche, as to the hede tharof, beth and ought to be ſul gettes, and obedyentes. Wherfor thanne it wolle followe neceſſaryly that any kinge to be not ſubget to any man is unpoſſible, ſythen euery kinge as a membre of holy Chirch, is ſubjecte to the Pope. Thanne whethir this ſubgeccione be only of his perſone, or alſo of and in his perſone and his kingdome, which bothe be temporales onely, now remaneth to be proved. And to

prove that he and his kingdome, and alſo he in his kingdome and in all other of his temporalties, beth ſubget vnto the Pope, I procede in this maner. Or Cryſte was conceyved, God ſaid of him by his Aungell to his moder theis wordes *Dabit illi Dominus Deus ſedem Dauid patris ejus, et regnabit in domo Jacob in eternum, et regni ejus non erit finis.* Of which wordes this is the ſentence. God promitted by his Aungell that Criſte Jeſus ſhulde haue the eſtate and dignite of Dauid which was kynge of Iſrael, and that he ſhuld reigne in that kingdome, which in the forſaid wordes the Aungell called the houſe of Jacob, for Jacob was called Iſraell, of whom all the people of that Roialme were deſcended. And tharfor by him, and of him, that roialme was called the kingdome of Iſraell, in whiche the Aungell ſaid that Criſte ſhuld reigne for euermore, and that ther ſhuld neuer be ende of his reigne. Iſraell by interpretacion is a man that ſeeth God; thanne is not the kingdome of whiche the aungell thoo ſpake the kingdome of Jewes, for they ſeen nat God, and alſo thaire kingdome is endede; but it is the kingdome of all Cryſten men, which onely amonge al mankynde ſeen God, and euyr ſhall laſte, and nowe is called all holy Chyrche. In this kyngdome nowe reyneth Cryſte by his vicare, and euer ſhall reygne, for he promitteth to be with vs vnto the ende of the worlde, as ſomtyme reyned Dauid in the kingdome of Iſraell while he lyvede. And ſithen all the Princes and Subjectes of Kinge Dauid were his ſubjectis in thair perſones, and in thair poſſeſſions, why than beth not now all the kinges and princes of the chirche fygured by the kingdome of Dauid, al ſo wele ſubjectes to the Pope in thaire perſones, as in thair temporaltes? Kinge David toke not from his ſubgetts thaire goodes or poſſeſſiouns f. 322. with oute juſte cauſe; but yit he compelled the princes of euery Tribe to rule juſtely thair ſubjectes, and els he puniſhed thayme for thaire defautes. So thogh the Pope toke not from the kings thair goodes and poſſeſſions with outen cauſe, yet he ought compelle theym to rule juſtely thaire ſubjects, and els to punyſhe theym for thaire neglygens and defauts. Thus Moyſes hanged the princes that punyſhed not thaire ſubjectes whanne they hadde offended. Thus haue Popes punyſshed Emperours and Kinggis when thay haue myſrulyd thaire ſubjects, as we rede in Cronicles of olde dais; for thay ought to correcte thaire owne ſubjectes whanne thay offended. So ought the Pope to correcte theym whanne thay offende; and els thaire defautes ſhalle remayne vnpunyſshed, which God wold not. And therfor Criſte is Kinge of all Kinges, and lord of all the worlde; havynge in the handes of the Pope his vicare, both ſwerdes; for which he is called *Rex et Sacerdos*, and compellith all princes as well ſpirituell, as temporell to come to his gret councelles. By which matiers, and by many moo which wolde aſke grete trait of tyme yf thay ſhulde be ſpecified, it may vndoubtedly appere that ther is now noo kingdome in the Erthe, of Criſten men, of which the kinge is not ſubjecte, alſo welle in temporaltes, as ſpiritualtes. Wherthrough the forſayd minor is now clerely proved unpoſſible, and therfor it may not be tru.

Forteſcu.

Here is the Conſequent of the forſayd argument diſproved.

And ſithen the minor of the forſaid argument is proved impoſſible and tharfor vntrue, the conclucion, called the conſequent, is not neceſſarye, and therfor not good by logyke, or eny other faculte; wherthrough it maketh no maner profe or evydence ayenſte the right of ſucceſſion of women in kingdomes, as by the ſaid argument was intended. And though the ſaid minor hadde be poſſible and true, yet the conſequent tharof wolde haue

f. 322 b.

made no good argumente; for though a kynge be not ſubjecte to any man in temporaltes. yet it folowith not tharof that ſuch a kinge is not ſubjecte to any man *ſimpliciter; quia arguendo a quo ad ſimpliciter, non valet argumentum.*

The Lerned Man.

The lerned man holdyth hym content.

Then ſaid the forſaid lerned man in this wyſe, Truly Syr, ye have nowe declared thies matieres ſo openly and clerly that ther remayneth no matier of evydence ayenſte the Kinge or his Roialmes by reaſoune of the jugement yoven by God a yenſte woman, wha'me he ſaid *Eris ſub poteſtate viri et ipſe dominabitur tui*, which was the mooſte ſore matier ayenſte the inherytaunce of woman in kingdomes.

The Lerned Man.

The lyuere ſued by the heires of the duke of Clarence.

But Syr, I remembre me well that I haue redde a writinge made in your name in whiche ye doubted whethir that Phelyppe moder to Roger ſometyme Erle of Marche, of whome the Kynge is deſcended, were the doughter of Syr Lyonell Duke of Clarence, and wheder the ſame Duke had any iſſue that ovir levid him or no; for ye ſaid that ye had not ſeen nor harde

f. 323.

of any man that hadd ſeen any recorde provinge that the ſaid Philipp, or eny of hire heires, or that other perſonne hadde euir any lyuere in the Chauncerie, or otherwyſe, of any lordeſhippes or other lyvelode that were ſomtyme to the ſaid duke of Clarence. Natheleſſe I mervell not grettly of youre ignorance tharin; for I can well ſuppoſe that befor your departinge out of this londe ye delt not moche with that inheritaunce, and tharfor made nevir ſerche for the lyuerez tharof. And while ye were by yonde the ſee, ye might not ſe eny ſuche recorde. But Sir, now that ye beth come hider ye may with oute difficulte ſe recordes, proving ſuch liuerez made alſo well to the ſaid Phillip, as to diuerſe of hire iſſue, as heires to the forſaid duke, and alſo as heires to the docheſſe his wyfe dame Elizabeth moder to ſaid Philippe, as here after ye ſhall neuer haue doute, or finde difficulte in that matier. Whervpone the ſame lerned man ſchevyd vnto the ſaid Forteſcu, a copye of an accompte made in the Eſcheker in the dais of Kinge Edward the thirde in th's wordes: *In compoto Johannis Greſſingham Eſcheatoris Regis in Comitatibus Norfolcie et Suffolcie computatur a vigeſimo ſeptimo die Novembris anno quadrageſimo ſecundo, uſque ad annum quadrageſimum octavum, de aliquibus exitibus manerorum de Walſyngham ſeu Creſeham que*

Leonellus nuper Dux Clarenciæ defunctus tenuit per legem Angliæ poſt mortem Elizabethæ quondam uxoris ſuæ de rege in capite ut de hereditate Philippæ filiæ et heredis predictorum Leonelli et Elizabethæ, ſicut continetur tranſcripto cujuſdum inquiſitionis et extentæ coram dicto Eſcheatore inde capta ſuper hunc compotum decimo-ſeptimo die Octobris anno quadrigeſimo tertio, quo die idem Dux obiit, et dictus Eſcheator maneria illa per mortem ipſius Ducis cæpit in manum regis uſque vigeſimum quartum diem Auguſti ſequentis, quo die dicta Philippa quam Edmundus de mortuo mari Comes Marchiæ duxit in uxorem ætatem ſuam ſufficienter probavit, et rex cepit fidelitatem ipſius comitis regi de omnibus terris et tenementis quæ prædictus nuper dux tenuit tam in dominico ſuo ut de feodo, quam per legem Angliæ poſt mortem prædictæ Elizabethæ quondam uxoris ſuæ, matris ipſius Philippæ de hereditate ejuſdem Philippæ debitam, et eiſdem comiti et Philippæ omnes terras et tenementa predicta cum pertinentiis reddidit, ac Rex per breve ſuum datum eodem vigeſimo quarto die Auguſti precipit dicto Eſcheatori eiſdem comiti et Philippæ de omnibus terris et tenementis predictis plenam ſeiſinam habere facere non R. et cet By whiche recorde it clerely apperith that the forſayd Philippe was doughter and heire to the forſaid duke of Clarence, and to Elizabeth his wyfe; and that ſche, and the Erle of March hire houſbond had liuere in the Kings Chauncerie of all the landis and tenements whiche the forſaid duke helde the day of his deth in his demeane as of fee; and alſo of all thoo landes and tenements which he held by the curteſy of Englonde after the deth of the forſayd Docheſſe. And ouir this, the forſayd lerned man offered to haue ſhewed to the forſayd Forteſcu diuerſe other recordes as well of f. 29. the Eſcheker, as of the Chauncerie, proving all the premiſſes if he wold haue goten with hym into the ſame Courtes.

Forteſcu.

Wherunto Forteſcu, I pray you, Sir, to ſhew to me no moo records of this matier, For this ſuffyſith to put oute of my mynde alle the doute that I hadde in this matier. For ſithen the ſaid Philippe and her huſbande hadde lyuere as heire to the forſaid duke in oone Countee, it may not be douted but that thay hadd lyke liuere in euery Countee of Englonde wher as the ſaid duc hadd any lyfelode. And thoughe thay hadde not, yet it apperith that thay ought to haue hadde.

The Lerned Man.

Then ſaid the lerned man in this wyſe, Syr, while ye were in Scotteland ye wrote howe f. 30 b. kinge Henry the firſt hadde iſſue a doughter wedded to the Emperoure of Almayne, by whome ſhe hadd no iſſue; but after his deceaſe ſhe was wedded to the Erle of Angeou, and had iſſue by him a ſonne afterward called Henry fitz Empreſſe; and that kinge diede without eny other iſſue. After whoſe deth this londe wold not ſuffre his doughter to reygne

upon hem, by cauſe, as ye ſayd, it was not inheritable by woman; and by the ſame reaſonne thay wolde not ſuffre hire ſonne to be thaire kinge by title of her; but thay chuſe thanne Stephen Erle of Boloyne, ſuſter ſonne to the ſaid kinge, to be thaire kinge; which by force of that eleccion was made and ennoynted Kinge of Englonde, and ſo reigned more thanne eighteen yere. And after that, whanne the ſonnes whiche the ſaid Kinge Stephen hadde were dede, accorde toke bitwene him and Henry fitz Empreſſe that the ſame Henry ſhuld after his deceſe have the kingdome of England to him, and to his heires males, for euermore; of whiche eſtate he was thanne made ſure by auctorite of parliament, by which title he and his iſſue hath reyned in this land alle waye ſethenne. Syr, me ſemythe whanne ye wrote this ye knewe not well the Chronicles that beth wryten of Kinge Stephen, and of Henry fitz Empreſſe. For certaynly Kinge Stephen come not to this londe by eleccion. Nor Henry fitz Empreſſe was entitled tharin by auctoryte of parlament. Wherfor ſithen ye be now in this londe, where ye may ſerche and find the trouthe therof, which ye knew not then, me thinketh it were for you nowe to make ſuche ſerche, and thanne to declare by your wrytinge the clerneſſe and trouthe of this matier; for els the Kings title, as well to this londe, as to his Roialme of Fraunce, might be dyffamed and hurte by coloure of your ſayde wrytinge, which I knowe well ye wolde not wer ſo in any wyſſe.

Forteſcu.

f. 224 b. The ſerche made touching the forſayd matier.

I thanke*you my frende, for your counceyll. But yet truly I haue done alle redy as ye now aduyſe me. And therfore I ſhalle ſchewe vnto you in articles, what I haue founde in ſondrye Cronicles of the matier. Fyrſte I find in a Cronicle written by a worſhipfull clarke called Radulphus de Duceto ſumtyme Deane of Pawles, how vndyr the yere of our lorde one thouſand one hundred and thirty-five, he writeth theſe wordes,[1] *Rex Anglor' Henrycus cum regnaſſet annis triginta quinque, quatuor etiam menſibus, deceſſit apud Sanctus Dionyſium*[2] *in Silua Leonum, et in Anglia ſepultus eſt apud Radingum.*[3] *Hugo Bygod Seneſcallum regis veniens in Angliam, coram Archiepiſcopo Cantuarienſi ſacramento probauit quod dum Rex Henricus ageret in extremis, ortis quibuſdam inimiciis inter ipſum et imperatricem, ipſam ex heredauit, et Stephanum Boloniæ Comitem heredem inſtituit. Willielmus Cantuarienſis nimis credulus verbis Seneſcalli, Stephanum Moritonii*[4] *Comitem conſecrauit in Regem apud Weſtmonaſterium.* By whiche wordes it apperith that Kinge Stephen was made Kinge of Englande, and the Empreſſe put from that eſtate oonely by the reporte of the Stewarde of the Kings Houſe, to whiche the Archebiſshope gave to haſty credence. Wherthorough it apperith that the ſame Kinge Stephen was not choſen to be Kinge of Englonde, as is conteyned in the forſayd wrytinge made in Scoteland.

[1] Twyſden, Decem Scriptores.
[2] St. Denis le Forment in Normandy.
[3] Reading.
[4] Moretoil in Normandy, of which Stephen was count.

Forteſcu.

Item I finde in the ſame Cronicle howe that in the yere of our lorde one thouſand one hundred and fifty-two, Henry fitz Empreſſe entred into this londe wherof the ſaid cronicles wrytyth under thees wordes *Henricus dux Normannorum intrauit Angliam in manu valida infra octavas Epiphanie, Caſtellum de Malmeſbury obſedit, et milites intus obſeſſos ad dedicionem coegit. Euſtachius filius Regis mortuus eſt.* By which it apperith that in the lyffe of Kinge Stephen, and by fore any accorde made with him, Henry fitz Empreſſe claymed this londe in his owne right as inherytor tharoff; for at the tyme of his entre he hadd non othere tharto. Another Cronicle. f. 325.

Forteſcu.

Item in the yere of oure lorde one thouſand one hundred and fifty-three the ſaid Cronicler[1] writeth in this wyſe *Euenit quod minime credebatur, diſſencio regni non dirimitur in gladio. Partibus euocatis hinc et inde tranſaccio celebrata eſt; diligencia interuenit Archiepiſcopi Cantuarienſis et auctoritas plurium operata eſt: Wintonienſis Epiſcopi profuit ſolicitudo: coepiſcoporum aſſenſus non defuit; defuit procerum et concilium et conſenſus. Et ut noſtri majores videantur a legibus aliquid accepiſſe, novi aliquid a legibus ſumpſerunt. Ducem ſi quidem Normannorum Rex in filium arrogavit et in eum jus ſuum tranſtulit, et poteſtatem ſibi coadjunxerit, regiæ dignitatis ſolam ymaginem referravit. Et ſi profeticum illud attenderis, jam ſe induit genitore, jam ducem arrogavit in filium: In particípem regni et poſt modum ſucceſſorum univerſi ducem recipient: In rege ducem et in duce regem ſinguli venerabuntur.* By this Cronicle it apperith that the accorde made betwene Kinge Stephen, and Henry fitz Empreſſe was a priuat peas, and covenant made betwene hem by the meanys of ſpirituell men for the terme of the lyffe of Kinge Stephen, and toke no longer any effecte, for it was made by none auctorite of parlyment; as it expreſſely apperith, by the ſame Cronicle, vndir thees wordes. *Epiſcoporum aſſenſus non defuit, defuit procerum et conſilium et conſenſus.* What wordis may more clerly ſhewe that it was not made by auctorite of parliament than doon thies wordes that ſeyn there lacked to this accorde the councell and aſſent of the nobles temporals of the londe? Item another Cronicle.

Forteſcu.

Item in an other Cronicle wrytten under the yere of oure lorde one thouſand one hundred and fifty-two is conteyned thus, *Stephanus Rex Anglorum et Henricus dux Normannorum cognatus ejus, octo Idus nouembris Juſticiâ de celo proſpiciente, concordati ſunt hoc modo. Rex prius recognouit in conuentu Epiſcoporum et comitum et relinquorum optimatum* f. 325 b. Another Cronicle.

[1] Twyſden, Decem Scriptores.

hereditarium jus quod dux Henricus habebat in Regno Anglie, et dux benigne conceſſit vt rex tota vita ſua ſi vellet regnum teneret. And in lyke fourme is wrytten the ſame yere, *quaſi de verbo in verbum*, in the Cronicle Flores Hyſtoriarum. By which it expreſſely apperith that Kinge Stephen knowledged that Henry fitz Empreſſe which was thoo entred into Englonde, hadd right to the ſaid londe as his inherytaunce; and that after that accorde, the ſaid King Stephen had no right tharin but by the graunte of Henry fitz Empreſſe.

The Lerned Man.

The effecte of the forſayd cronicles.

Whervpon the forſaid lerned man than ſayd in this maner. Faithfully Syr, me thinketh that ye haue done good and effectuell diligence in the ſerch of the Cronicles. Which be right playne, and prouen clerly that Kinge Stephen was neuer choſen by the londe to be kinge tharof; and alſo that Henry fitz Empreſſe was Kinge tharof of his owne inherytaunce, as ſonne and heire to the Empreſſe doughter to Kinge Henry the fyrſte; and that he cam not to this londe by title of eleccion, or by auctorite of parlyament, as was ſuppoſed by the forſayd wrytinge made in Scoteland. Wherthorough than it openly apperith that he had right tharin by his moder, whiche right he enjoyed all his lyfe, and ſo haue done al his childer ſithen. And by the ſame reaſoune Roger ſometyme Erle of Marche, ſonne to Philippe doughter to the ſayd Duke of Clarence, elder brother to prynce Edward, fader to Kinge Richarde ought to haue hadd this Roialme as next heire to Kinge Richarde. By which conſideracione Kinge Richard made the ſame Erle of Marche to be proclaymed in parlyament his heyre apparent, beynge ther tho preſent the Duke of Lancaſter, and his ſonne the Erle of Derby, whiche after the dethe of King Richarde reygned as Kinge of Englonde callyd Kinge Henry the fourth. Which right to the Crowne is deſcended from the ſayd Roger ſometyme Erle of Marche, to the Kinge our ſouerayne lorde, as to his Coſynne and heire, that is to ſaynge ſonne to Rycharde, ſonne to Anne, daughter of the ſame Rogere Erle of Marche; as is in an article before ſpecially declared. And by lyke tytle, deſcent, and right, our ſayd ſoueraynge lorde ought to haue the Roialme of Fraunce by Iſabell moder to Kinge Edwarde the thirde doughter and heire to the Kinge of Fraunce.

f. 326.

The Lerned Man.

Nowe truly Syr, I am gladd that I haue comenyd with you uppon all thes matiers. For how ſo be it that when ye wrote them ye intended that thay ſhuld haue been ſore agayne the Kings title by which he tho claymed, and now hath this londe, and ſo thay foundyd, and wer ſo taken of many men, God knowyth; yet nowe, blyſſed be God, thay be turned to a contrarie entent and effecte, for thay have cauſyd alle your forſayd declaracions. By whiche the ſaid title is now ſo clere and oppenne that ther remayneth to theym that wyll ſtryve therwith, nether matier nor coloure to do ſo. And verely ye be worthy grete thanke for

f. 32 b.

that ye haue thus planely ſayd in thies matiers, not ſparinge your owne oppynions whiche ye helde, while ye ware a parcyalle man; but preferring right a bowe wylle, and alle effections. And where as late ye drad that ſuch maner of delynge might hurte your fame, truly Sir, it may not do ſo, for ye haue in no thinge ſayd nay to ſuch thinges as ye verely knewe; but in many things which ye proued by arguments ye haue now dyſprouyd by gretter reaſons. And many things which ye wrote by informacions wenynge thay hadd bene ſuch as ye were tho informed, ye have ſethen knowen by grete Euydences and Cronicles that thay were not ſuch; which ye nowe knowledge as ye ought to do. For els ye hadd doone a yen right; which me thynketh ye be not ſo diſpoſed to doo.

FINIS.

LEGAL ADVICE TO PURCHASERS OF LAND.

THESE verſes are preſerved amongſt the Rawlinſon manuſcripts in the Bodleian Library, and have not been before printed. The original MS. is in a very old handwriting, and is headed, in more modern characters, "Legal advice to purchaſers of land, ſecundum Forteſcue." They are here given from a copy taken directly from the original, through the kindneſs of the Librarian, the Rev. H. O. Coxe.

Hic incepit quoddam Breve utile ſecundum Forteſcu.[1]

Who will beware in purchaſing
Conſider the poyntis that byn following:
Firſt ſee that the lond bee cleere in title of the ſeller,
See that he not in priſon bee,
And that he bee in good minde and memory;
And that hit ſtand not in no danger,
And of no woman's endower;
See whether the tenure be bond or free,
And have reles of every feffe;
See that the ſeller be of age,
And that hit lye in noe morgage;
Loke yef a taile therof may be found,
And whether it ſtand in ſtatutes bond;
Conſider what ſervice longeth thereto,
And what quyte rent preſent muſt goo;
And if hit meoue of weddid woman,
Thenke on couert de Baron then;

[1] From Rawlinſon MSS. (Bodleian), B. CCLII.

And yef thou might in any wyſe
Make the charter with waramit tys,
To their heires and aſſignes alſo,
This ſhall a wiſe purchaſer doo.
In fifteen yeeres yef thou wyſe be,
Thou ſhalt agayn thy money ſee.

THE COMODYTES OF ENGLOND,

BY

SIR JOHN FORTESCUE, Knyght.

THIS piece, now for the firſt time printed, is copied from a MS. in the Laud Collection at the Bodleian Library, of a date nearly, if not altogether, as early as the time of the author, who muſt have written it before the year 1451; for the province of Guienne ceaſed to belong to the Engliſh in that year.

Some perſons have doubted whether it can be aſcribed to Chancellor Forteſcue. It is, however, generally attributed to him; and the language in which the excellence of the productions of England is extolled, the eaſe and comfort of the common people, and the wealth of the Church dwelt upon, ſo much reſembles that of paſſages in "De Laudibus" and "De Dominio," that I have little doubt of its origin. It does not appear, however, to have been prepared for publication; many ſentences being imperfectly arranged, as if written haſtily, and without reviſion.

It is included in the ſame volume with the MS. of Forteſcue's "De Dominio Regali et Politico" before mentioned, being placed after that treatiſe. At the foot of the firſt page of the thin folio is written, *Liber Gulielmi Laud Archiepi Cantuar. et Cancellarii Vniverſitatis Oxon.* 1633.

THESE BE THE COMODYTES OF ENGLOND.

FYRST Englond hath three Ryverſe with in hym ſelffe comynge owte of the See in to the myddes of the londe, whereby the ſhyppes of all maner charge, of all maner natyons, may convey and ſeylle to in the greteſte cytes of the lond, both ebbe and flodde with all manner marchandyes.

1. The fyrſt Ryver ys callyd Humber, that comyth to Yorke and ſo forth uppe into the contrey.
2. The ſecond Ryver ys called Temys, whych comyth uppe to London and ſo forth into the contrey.
3. The thyrde Ryver is callyd Saverne which comyth to Bryſtowe and ſo forth into the contrey.

2. Secondly. Englond ys induyd and honouryd with many goode harbouers, and goode roodys, and goode covertts; that ys to undyrſtand from the New Caſtell upe unto the Ryver of Saverne.

The fyrſte ys Tynmouth havyn, the ſeconde ys Hartylpole havyn, the third Wythby havyn, the 4th Scarborough, the 5th Ffleynborough, the 6th Humbur, the 7th Lynne, the 8th Deepes,[1] the 9th Eley, the 10th Yearmouth, the 11th Kyrkeley Roode,[2] the 12th Downenych havyn, the 13th Orforde havyn, the 14th Orwell havyn, the 15th Thanet ouer Temys Mouth, the 16th Sanwych havyn, the 17th Downys, the 18th Dover, the 19th Lewys, the 20th Camber,[3] the 21st Wynchelſe, the 22nd Rye, the 23rd Appolder,[4] the 24th Pevenſey, the 25th Bourne, the 26th Seforde, the 27th Deende,[5] the 28th Havent.

[1] Deeping on the Welland, in Lincolnſhire.
[2] This muſt be the harbour of Kirkly, near Loweſtoft.
[3] Camber between Winchelſea and Rye, now only a ruined caſtle, and no longer waſhed by the ſea.
[4] Appledore on the Rother, in Kent.
[5] Probably meant for Weſt Deane, on the Cuckmere, near Seaford, Suſſex.

Here folowyth the goode havyns within the Ille of Whyght. Fyrſt, the whych ys the 29th havyn of Englond, that ys to wet Porttſmouth, the 30th Goſporte, the 31st Portcheſter, the 32nd Hamelle Ryce, the 33rd Hamelle the Hoole,[1] and all the holle Ryver up to Hampton the whyche is the 34th havyn, the 35th ys Leymyngton, the 36th Polle havyn, the 37th Weymouthe, the 38th Exmoth, the 39th Dertmouthe, the 40th Plymouthe, the 41st Ffowe, the 42nd Falmouth, the 43rd Bryge Watter, the 44th the hole ryver of Saverne. And there be many other goode havyns that I have not named, and there be many other goode havyns in the coſt of Walys, as Tynby the whych ys the 45th haven of Englond, the 46th Mylforde, the 47th Cayrdefe, and many oon moo. The 48th Briſtowe.

Her after ye ſhall undyrſtand how the dyvers coſts of Englond by the ſee ſyde abuttyth agenſt the coſts of other lands on the other ſyde of the ſee.

Fyrſt Fleynborough Hed, which is now callyd Brytlynton Hed in Yorke ſchyre, abuttyth evyn agenſt Stauorn in Freſlond on that other ſyde the ſee.

Yearmouth in Norfolk abuttyth agenſt the Maſe in Holland. Horforde Neſſe with the brede[2] of the Teymys mouth, the whyche ys more than ſixty mylle of brede, and ther aſſemlynge the North ſtreme, and the South ſtreme to gyder, abuttyth agenſt Seland and Flaundyrs.

Dover abuttyth agenſte Caleyſe.

Wynchelſea unto Beauchyſe abuttyth agenſt Caleys and Seynt Valeryx.

The Baye of Arondell abuttyth agenſt Deepe.

The Iland of Wyght abuttyth agenſt Harflete.

Portland abuttyth agenſt Schyrboroughe.

Dertmouth abuttyth agenſt Seynt Malous.

Seynt Myghelles Mownte in Cornwaylle agenſte Uſshente in Bretany.

Weſt from Seynt Mychells Mounte unto the Ryver of Saverne in the cooſte of Englond abuttyth agenſt the Spaynyſh See.

Weſt from Brydlyngton Hed in Yorke ſchyre in the cooſt of Englond abuttyth agenſt the North See in Norway.

Weſt from Severne to the New Caſtell in the coſt of Englond abuttyth agenſt Walys and Skotland.

And thus longe ys the cooſte of Englonde on the oon ſyde of hym by ſee.—As hyt ys from Brydlyngton Hed in Yorke ſchyre, unto Seynt Myghelle Mounte in Cornewaylle, as hyt ys from Stauorne in Fryſlande, unto Uſshente in Bretany.

This aboute the ſhyres in thys ſyde of the ſee in the Reame of Englond, that abuttyth agenſt the ſchyrys of Duche tong and French tong on that other ſyde of the ſee.—

---

[1] Theſe two places are on the Hamble, which joins Southampton Water.

[2] i. e. breadth.

Yorke Schyre, Lyncolne Schyre, and Northfolke, abuttyth agenſt all Fryſlond, and Holland.

Suffolke, and Eſſexe, with the brede of the Temys mowthe, abuttyth agenſt all Seland and Flandyrs.

Kentt, and Suſſexe, abuttyth agenſt all Picardy.

Hamſhyre, Dorſetſhyre, and Whylſhire, abuttyth agenſt all Normandy.

Devynſhyre and Cornwaylle abuttyth agenſt all Bretany from Maloue.

And the cooſt of France is no longer by the narow ſee cooſt than from Calyce in Pycardy unto Seynt Malous in Bretany; whyche from the ferlond of Tenytt in Kent ond longe the cooſt of the narow ſee, Sowſex, Hamſhire, Dorſſettſhire, and Whylſhyre, unto Dertmouth in Devynſhire, been as long by the narow ſee coſt as all the cooſt of France ys by the narrow ſee cooſt.

And on the other ſyde of Bretayn the cooſt of France hath his length longer, be the lengthe of all the foreſt Gearde,[1] and the contrey Petowe, unto our contre of Gyan, and of Gaſcowyn; whiche bothe two contreys longythe to oure Soverayne Lorde Kynge of Ynglonde on that other ſyde the See.

And to all France longythe but ſix goode havyns in the Narow See. Over the other ſide of Bretayn longythe no havyn to hym but only Rochell. And that theſe havens of France had never yett noo navy of oowyn ſchyppys, nor never ſhall have but hyt be a fewe ſchyppys of wer, that may doo us noo harme grete by the ſee.

And wee a geanwarde may doo them but lytyll harme by the ſee, for they have but lytyll goode [which] they adventure unto ony contrey.

And therfore almaner Nations maye have full knowlege of the Reame of Ynglond by the Botayles;[2] lyke as hyt ys reherſyd afore that Ynglond ys no lytyll londe but a ſubſtauncyall londe, when it abuttythe agenſt ſo many londes of Duche tonge, Frenche tonge, and Bretayn tonge alſo.

3. The third comodyte of this londe ys that the grounde therof ys ſoo goode and comodyous to the ſhepe, that beren ſoo goode woll and ys ſoo plentyous therof that all the merchands of two londs may not by that one merchandyz.

4. The fourth comodyte that the comones have with in hem ys wolleyn clothe redy made at all tymys to ſerve the merchaunts of ony two kyngdomys Cryſtenye or hethynnye.

5. The fifth comodyte ys the grete plente ores of tyn, led and ſee cole, tyn and led.

6. The ſixth comodyte ys the gretteſt treſoure of the worlde, and ys moſt plente therof, that ys golde ore and ſylver ore, wherof we have the worthyeſt paymente paſſynge ony lond cryſtyn or hethen.

---

[1] Perhaps this is for Guerande, on the ſouth part of the coaſt of Brittany. Petowe, i.e. Poitou.

[2] i. e. Abuttals, an old word for boundaries, or frontiers.

7. The ſeventh comodyte ys that the comune peple of thys londe are the beſte fedde, and alſo the beſt cledde of any natyon cryſtyn or hethen.

And alſo many other comodyteys that I have not reherſyd, as iron and ſalte, hony and waxe, reſonable inowghe. And ſoo of all other comodyteys that are in all cryſten londys God hathe ſentt us parte in thys reame growynge for the mooſt ſubſtaunce; ſave only wyne and oylle, for the whyche God hathe ſent us agenwarde ryght goode ale and myghty drynke for the comune people. And thereto more plenty of fyſhe and fleſhe than to any contrey of the worlde.

As towchynge the worſhyppe of thys londe, the whiche appendyn to Holy Chyrche, be the two Unyverſyteys at Oxforde and Cambryge, the whiche ther ys noo man that travaylythe that knowthe two ſo goode Unniverſytes in oo lande, where doctors of dyvynyte with all other clergy ſcyence, that beyn ſo well red and tawght as they are in t ys londe, and Goddes ſervyes ſo worthyly, devynly, and devotly ſeyd, and chaſtyte in lyvynge paſſynge ony other londe; and the Worthynes and Ryches of oure Arſbyſſhoppys and Byſſhoppys; and grete Abbeys are indowyd here in thys londe, and every preyſt ſyngynge with chaleys of ſylver, and with noo lede nor tyn as they do in other places.

And all the Holy Martyrs, confeſſors, and vyrgyns that are in thys londe ſcrynys and odyr Images, as oure Lady Seyntt Mary, they are more rycher of golde, preſſyous ſtonys, and jewells than ony other londe.

And as towchynge the grete worthynes of thys Reame the whiche appendyn to all temporall Lordeſhyppe, theyſe dyverſe londys and Lordeſhyppes in dyverſe Regyons be undyr oure lege lorde the Kynges obeyſance. As Inglond Walys and Cornewaylle as one londe, and three dyverſe langage. Irelond another londe and a nother langage. Baſkone[1] a grete Lordſhyppe and the fifth langage. Gyen and myche of the reame of France the fourth londe and the ſixth langage.

Why the Merchanntts of all Cryſten Natyons moſt reparen with her ſhyppys and merchandyſe to Sluſe in Flaundyrs for to uttur them in that londe, rather than to any other place on the other ſyde of the See, I ſhall reherſe you.

Ffor the Merchanntts of the Northe Weſte Contrey as of Norwaye, Denmarke, Sowthe Pruſe, and all the Merchantts Eſtlynge,[2] and of Lowe Dowche londe, hyt were to fferre for theym to ſeke hem in the Sowtheeſte contrey, as almaner Lumbardds, Catoloynys, Spaynardds, and Portyngalers, Galycyans, Biſkers, Baſkones, Chavers,[3] and Bretoners, for ſuche merchandyſe as they have nede of; but for as moche as Sluſe in Flandyrs y myd wey

[1] Baſkone, i.e. Vaſconia, Gaſcony. Baſkones, further on, are Gaſcons.

[2] The inhabitants of the Hanſe-towns were called Eaſterlings.

[3] Probably for Chaffers, i. e. Merchants.

betwene bothe, and thereto a goode havon, and all maner of merchandyſe may better be caryed thenſe by londe and by watyr than from ony place on that other ſyde of the ſee; that ys the grete cauſe that the merchannts of all Cryſten Natyons makyn to Sluſe in Flanders there grete repayre.

And what merchandyſe and rycheſe come thydyr and in to all other londs owte of the Northe eſt Contrey be all Merchanndes of the londe, whiche lond ſpekyn all maner Duche tonge, hyer Dowche, and lower Duche, and no other langage amonge them; forſothe they brynge grete Merchandyſe, as 1 Hony, 2 Herynges, 3 Stokefyſshe, 4 Saltefyſshe, 5 Samon, 6 Salte, 7 Ele, 8 Sturgyon, 9 grete plente of Lynnyn-clothe, 10 Oſmond,[1] 11 Yron, 12 all maner Copprue, 13 Bale-flexe, 14 mychc Wexe, 15 Pyche, and 16 Tarre, 17 Borde, grete plente of 18 Corne, and 19 Mele, 20 grete Maſtes for ſchyppys, 21 Bowſtanys,[2] 22 Spereſtanys, 23[3] Grey werke, 24[3] Rede werke, and all maner of 25 Peltry, and 26[3] all maner of Latry, 27 Rynyſshe Wyne, 28 Stele, and 29 Swerdes, 30[3] Tynglards, all maner of 31 Glas, 32 goode Woode, 33 Haburdaſshewaye, and many other merchandyſe dyvers alſo.

And what Merchandyſe cummyth owte of the Sowthe eſt Contrey by the Merchanntes of Venys, Gene, Catelonys, Florentynes, Valentynes (?), and be almaner merchanntes Lumbardde, the whiche merchannttes Lumbard have but lyttyll merchandyſe growinge within them ſelffe, but aryn[4] and levyn as merchannts betwene Cryſten men and hethen men, that fechythe by her grete aventure hethyn goodes and uttur them among us Cryſten men, and owre goodes Cryſtyn utter they amonge the hethyn men. Forſothe they brynge grete Merchandyſe, and that be theſe: They brynge all maner of Spycys, as 1 Peper, 2 Grynys,[5] 3 Clowys, 4 Gyngyr, 5 Maſes, 6 Synamon, 7 Saffron, 8 Canell, 9 Galyngall,[6] 10 Ambergrys,[7] 11 Notmugges, 12 Dregs dyvers, 13 Rumney, 14 Malmeſey, 15 Greke Tyre, 16 Muſtadell, 17 Almond, 18 Date, 19 Fygge, 20 Reyſſynges, 21 Reſyns of Coranne, 22 Sugyr, 23 bale Woode, 24 Cotton, 25 Alome Roche, 26 Alome Soyle, 27 Quickſilver, 28 Brymſtone, 29 Cordes, 30 Clothes of Gold, 31 Clothes of Sylver, 32 Velvet, 33 Damaſke, 34 Satteyn, 35 Golde onwrought, 36 Sylver onwrought, 37 Saltpeter, 38 Oyle, 39 Perlys, 40 Corall, 41 Preſyous Stonys, and alſo many other dyvers dregs and ſpyce that belongyth both to grocers and to potycarys, with many other dyverſe merchandyſes. And lytyll have they of ther owne growynge but that they ſell in hethynes.

And owte of the kynges londe of Spayne cummythe goode dyght[8] merchandyſe, as owte of Caſtyll, Calyſe,[9] and Byſkey the whiche three Contreys longe to hym, for owte of Caſtyll cummyth moſt plenty of

1 Oyle, 2 Wyne, 3 Salte, 4 Honye, 5 Wexe, 6 Conyſell, 7 Geayne, Cordewayne.

---

[1] Oſmond, a kind of iron. Arch. Dict.
[2] Bow-ſticks and ſpear-ſhafts.
[3] 23, 24, 26, and 30 have not been identified.
[4] Aryn, i. e. are, exiſt.
[5] Grynys, grains.
[6] Galangal, or Calanga, an aromatic root from the Eaſt Indies.
[7] Obſcure in MS.
[8] Dyght, i. e. prepared.
[9] Calyſe, now Galliccia.

And ſoo dothe owt of Calys, but nowher nygh ſo moche. And owte of Biſkey cummyth mooſt plentye of Iron of ony Contrey of the worlde, moche Woode, Comyn, and 4 Safforn alſo.

And owte of the kynges londe of Portyngale and Algarbe cummythe grete merchandyſe as,

1 Mete oyle, 2 Woll oyle, 3 Salte, 4 Oſſeye, 5 Ryptage, 6 Baſcarde, 7 Capike, 8 Conyſell, 9 Waxe, 10 Honye, 11 Greyn, 12 Fygges, 13 Reyſſyns, 14 Cordewayne.[1]

And owte of Baſkone as for Bayon cummythe 1 Iron, 2 Comyn, 3 Lycorys, 4 goode Roſyn, 5 and Safforn.

And owte of Gyan as for Burdewys cummythe moche goode 1 Wyne and ys grete plente thereof, and 2 Safforn alſo; which two Contreys longe to Ynglonde on that ſyde the See

And owte of Bretayne cummythe moche 1 Salte, 2 Creſt Clothe, 3 Cannas, and 4 Lawmpreys.

[1] Of theſe items 4 is Oley, a wine; 6 is probably for Baſtard, a Spaniſh wine; 7 is for Caprick, a wine.

FINIS.

A LIST OF ALL THE KNOWN WORKS OF SIR JOHN FORTESCUE.

1.

OPUSCULUM De Natura Legis Naturæ.

A Latin Treatiſe, in two Parts; ſometimes called "De Vigore Legis Naturalis." A copy of Part I. is in the Bodleian, among the Laud MSS., and there was alſo a copy in the Worſley Library. The only known copy of Part II. is in the Lambeth Library, which contains a MS. of the whole Treatiſe complete. This ſecond part was not known in 1732 to Mr. Gregor, who ſays, in his Preface to "De Laudibus," that it was ſuppoſed to be loſt, or probably deſtroyed by its author, a remark repeated in the "Biographia Britannica" in 1750. Mr. Caſley, in his liſt of Forteſcue's works, in 1745, makes no mention of a ſecond part. Neither part has been printed before.

2. De Laudibus Legum Angliæ.
A Latin Treatiſe, firſt printed in the reign of Henry VIII.

3. De Dominio Regali et Politico.
Written in Engliſh. Edited and printed by Lord Forteſcue of Credan, in 1714 and 1719.

4. A Dialogue between Understanding and Faith.
The only known copy is on ſix leaves folio, in the Cotton Collection in the Britiſh Muſeum. It was much injured by the fire in 1731. Never before printed.

5. Of the Title of the House of York.
A Treatiſe written in ſupport of the claim of the Houſe of Lancaſter, of which the fragments in this volume, now printed for the firſt time, are all that are known to exiſt. The Cotton copy of the MS. was deſtroyed in the great fire, and there is no other copy known.

6. A Defence of the House of Lancaster.
The only known copy periſhed in the fire at the Cotton Library; it was written upon

one leaf. The only remaining paſſage is that in this volume, now printed for the firſt time.

7. Defensio Juris Domus Lancastriæ.

Written in Latin. The only known copy periſhed in the fire at the Cotton Library. The paſſages from this work which, with one exception, are now printed for the firſt time, are all that have ſurvived.

8. A Genealogy of the House of Lancaster.

The Cotton Copy loſt, and no other known.

9. Genealogia Regum Scotiæ ab Adamo usque ad Jacobum secundum.

The Cotton copy loſt; no copy known to exiſt.

10. The Declaracion by John Fortescu, Knyght, upon certayn Wrytings sent oute of Scotlande ayenst the Kinge's Title of the Roialme of England.

Several copies exiſt in MS. It is now printed for the firſt time.

A work given in Caſley's liſt of Forteſcue's works, as "A Defence of the Houſe of York, and King Edward IV." appears to be merely the above "Declaration" under a different name; for although the liſt was made ſo late as in 1745, no trace of any ſuch treatiſe can be found, and yet if it was then in exiſtence, it could hardly be now forgotten.

11. A List of the Comodytes of Englond.

The only copy of this work known to the editor is among the Laud MSS. in the Bodleian, from which it is now printed for the firſt time. Its authorſhip has been doubted by ſome writers.

12. Legal Advice to Purchasers.

In verſe, on a ſingle page, headed *Breve quoddam utile ſecundum Forteſcu.* Now printed for the firſt time from an MS. in the Rawlinſon Collection in the Bodleian.

Riſdon, writing about A.D. 1600, ſays that "Sir John Forteſcue wrote a Prayer Book, which favoured much of the times we live in." See Riſdon's "Survey of Devon," p. 189. This is the only notice of its exiſtence.

LEGAL OPINIONS AND JUDGMENTS

OF SIR JOHN FORTESCUE,

AS LORD CHIEF JUSTICE OF ENGLAND.

YEAR BOOKS. HEN. VI.

Michaelmas Term, 21 HEN VI.

NEWTON aſked of **Fortescue**, the Chief Juſtice, this queſtion. An attorney of this place brings an action of debt for his ſalary, and declares that he was retained by the defendant in the capacity of attorney, &c. Can the defendant wage his law? **Fortescue** ſaid: No; the reaſon being, that the juſtices can force him to be his attorney in ſpite of himſelf; but if the action was brought in that he was his attorney in a lower court, the defendant will wage his law.—To which NEWTON agreed. f. 4.

Eaſter Term, 21 HEN. VI.

Note, that **Fortescue**, Chief Juſtice of the King's Bench, and GODRED, another of the juſtices of the ſame place, aſked this queſtion in the Common Bench. An approver in the King's Bench had appealed certain perſons of felony; proceſs is made againſt them, in which the ſheriff returns "not found;" and as the juſtices of the ſame bench ſuppoſe that there are no ſuch perſons *in rerum naturâ* as the appellor has appealed, and in their opinion the appeal is feigned, the queſtion ariſes, whether they can on ſuch appeal give judgment on the appellor, or otherwiſe make proceſs until proceſs be determined againſt the appellees. Whereunto it was ſaid by all the juſtices, that in that caſe they can give judgment on the appellor; for when the appellor has appealed, he confeſſes the felony; and this confeſſion gives them power to attaint him, and he is attainted in his perſon; and it is in their diſcretion, whether they will make proceſs againſt the appellees or not; and alſo it is in their diſcretion whether they will ſuffer the appellor to make appeal or not. And it is a common courſe in our circuit, if one commence his appeal, and it can be brought to the notice of the juſtices that the appeal is feigned and had for no other purpoſe than to prolong his life, to give judgment on the appellor; for the appeal is not given for the advantage of the appellor, but for the advantage of the King. **Fortescue**: If an approver approve, he ſhall have no wages of the King until he has done his duty; and when he has done his duty f. 3 b.

n'aura aſcun gage de roy tanque il ad fait ſon devoir, et quand il ad fait ſon devoir, et ad acheve le battel, adonque il aura certaines gages dele Roy chefcun jour ; et tout ſoit que un approver voile conuſtre ſon Appel fals en le Court le Roy, uncore l'appelle ſera arraine ſur l'Appel. Mes ou un prover quand l'appelle eſt en le Champ preſt a derainer le battail conuſt ſon Appel fals, en ceo cas l'Appele ſera acquite. GODRED: La cauſe eſt pur ceo que ceo eſt un vanquis de battail. [The opinions of the other Juſtices follow.]

De Termino Michaelis, Anno xxii. Hen. VI.

28 b. Brief d'Annuitie fuit porte envers un perſon, et le plaintif fiſt ſon title per preſcription, le quel pria en aide dele patron et l'Ordinary. Proces fuit fait envers eux, qui firent defaut; per quel ſole traverſe le title de preſcription ; que fuit trove pour le plaintif: le perſon devy; un "ſcire facias" fuit ſue verz le ſucceſſor a aver execucion del dit annuity enſemblement oue les arrerages: le quel pria en aide del patron et de l'Ordinary, et avoit. Proces continue, le patron fiſt defaut, et l'Ordinary joine al parſon, et diſent que toutz le premiers Jurors furent morts, et traverſent le title de preſcription. E le plaintif demurra ſur le ple, entant que le title fuit travers avant cele temps, le quel trove fuit pour le plaintif: et en ant que meme cele iſſue ne ſera autre fois trie per entre parties, et prives purque agarde fuit que le plaintif recouvra. Et ore en Bank le Roy meſme le matiere eſt aſſigne pur error en brief d'Error entant que ſemble que le perſon et l'Ordinary duiſſent aver le ple. **Fortescue.** Tout ſoit que le defaut del patron et del Ordinary eſt auxi fort come ſi uſſent apparus et eſte fait parties a le ple ; uncore entant que fuit ſurmis que l'entiere Jury fuit morts, iſſint que le bref d'Attaint eux faile, il ſemble que il ſera reaſon a fauxcer le recoverer en meſme le point que fuit trie. Come en ſemblable cas, ſi homme ſoit ſeiſi de certaine terre, et ad iſſue fitz et ſa femme devy, et prend autre femme, et ont iſſue fille et aliene le terre et prend eſtate a luy et a ſa femme et a lour heire de lour ij corps engendre ; apres un accion eſt porte envers le baron et ſa femme, iſſint que meſme le terre eſt recouverte par accion trie, le baron et la femme devient ; ſi le fille porte "Formedon" vivant le frere, et recouvre et meſme le recoverie eſt plede en barre ele faulſera celle recoverie en meſme le pointe que fuit trie: le cauſe eſt, ele ne poet aver "Attaint;" car "Attaint" eſt donne a le heir general. Meſme le Ley eſt en Borough Englois, ou le filz puiſne eſt enherite: ſi le pere ad iſſue ij fils, et un recovre tail vers le pere per accion trie, le pere devy, le filz puiſne vivant ſon frere eigne faulſera cele recoverie en le point que fuit trie: car l'"Attaint" eſt donc a le fils eigne, et nemy a luy. YELVERTON: Per cele reaſon jammes doit recoverer per accion trie prendre effecte: car per cele reaſon ou un recoverie eſt taile envers mon anceſtre per accion trie peraventure c. ans paſſe, et or tout le Jury eſt mort, jeo ſera receu a faulſer cele

and has finiſhed the battel, then he ſhall have certain wages of the King each day; and albeit that the approver be willing to admit in the King's Court that his appeal is falſe, ſtill the appellee ſhall be arraigned on the appeal. But where an approver, when the appellee is on the ground, ready to dereign battel, admits his appeal to be falſe, then the appellee ſhall be acquitted. GODRED: The reaſon is, becauſe it is [equivalent to] a conqueſt by battel. [The opinions of the other Juſtices follow.]

Michaelmas Term, 22 HEN. VI.

A writ of Annuity was brought againſt a Parſon, and the plaintiff made his title by f. 28 b.
preſcription; and he (the Parſon) prayed aid of the Patron and Ordinary. Proceſs was made againſt them; and they made default, and he alone traverſed the title of preſcription; which was found for the plaintiff; and the Parſon dying, a "ſcire facias" was ſued againſt he ſucceſſor to have execution for the ſaid annuity together with the arrears; and he prayed aid of the Patron and Ordinary, and had it. The proceſs was continued; the Patron made default, and the Ordinary joined with the parſon, and they ſaid that all the firſt jurors were dead, and they traverſed the title of preſcription. The plaintiff demurred upon the plea, inaſmuch as the title was previouſly traverſed, and it was found for the plaintiff; and inaſmuch as that ſame iſſue ſhall not be again tried between the parties and privies, therefore it was awarded that the plaintiff ſhould recover. And now in the King's Bench the ſame matter is aſſigned for error, in a writ of Error, inaſmuch as it ſeems that the Parſon and Ordinary ought to have the plea. **Forteſcue:** Albeit that the default of the Patron and Ordinary is as ſtrong as if they had appeared and been made parties to the plea; ſtill, inaſmuch as it was ſurmiſed that the entire jury was dead, ſo that the writ of Attaint fails them, it appears that it will be right to falſify the recovery in the ſame point that was tried. As in a ſimilar caſe, if a man be ſeized of certain lands, and has iſſue a ſon, and his wife dies; and he takes another wife, and they have iſſue a daughter, and he alienates the land, and takes an eſtate to himſelf and wife and to the heirs of their two bodies begotten; afterwards an action is brought againſt the man and his wife, ſo that the ſame land is recovered by action tried, and the huſband and wife die; if the daughter brings "Formedon" during her brother's lifetime, and recovers, and the ſame recovery is pleaded in bar, ſhe ſhall falſify that recovery in the ſame point that was tried: the reaſon being, that ſhe cannot have "Attaint;" for "Attaint" is given to the heir general. The ſame law holds in Borough Engliſh, where the younger ſon inherits; if the father has iſſue two ſons, and a recovery is had againſt the father by action tried, and then the father dies, the younger ſon, while his elder brother is living ſhall falſify that recovery in the point that was tried; for the "Attaint" is good for the elder ſon, but not for him. YELVERTON: According to that reaſoning, a recovery by action tried ought never to take effect; for by that reaſoning where a recovery is had againſt my anceſtor by action tried, after the lapſe of perhaps a hundred years, when all the jury are dead, I ſhall be

recoverie en cele point que fuit trie; que n'eſt Ley ne reaſon. Et auxy un Abbe ou un parſon, patron et Ordinary ſi font defaut apres apparance, ou ſi le parſon prie en aide del patron et Ordinary qui font defaut, le parſon poet pleder en droit, et poit rendre l'accion ou perder per ſa defaute et ſon ſucceſſor ſans recovere. Et meſme le Ley eſt dun Abbe; et un recoverie per action trie, eſt plus fort que un reddicion ou recoverie par defaute pur que ſemble; &c.—Et puis furent adjournes, et le matter pende en continuance tanque al Terme de Paſche, procheine enſuant, &c.

De Termino Michaelis, Anno xxii. Hen. VI.

f. 30 b Thomas Hungerford et E. ſa femme portent brief de tranſgreſſion envers un Rob. de ceo que il avait pris ove force un K. villein le dit E. al temps que le dit E. fuit ſole, le dit K. adonque eſteant en le ſervice le dit E., per vertu de quel le dit E. le ſervice le dit K. par grand temps ad perdu, ſcavoir de tiel jour tanque al tiel jour. A que le defendant dit, que le dit K. fuit frank et de frank eſtat et nemy villein, preſt. *Et alii e contra.* Et quant al perder de ſon ſervice il dit que le dit K. ne fuit unque retenu ove le dit E., pret. *Et alii e contra.* Proces continue envers les Jurours tanque a ore que l'Enqueſt fuit preſt de paſſer, &c. [Here follow the opinions of Newton, Ashton, Markham, and others.] **Forteſcue:** Moy ſemble que ceſt brief *Quare Nativum et ſervientem ſuum cepit*, et ceſt brief *Quare Nativum et ſervientem ſuum in ſervitis ſuo exiſtentem*, ſont tout un: car il eſt enclude en ceo que il eſt ſon ſervant, et que il eſt en ſon ſervice, ſinon que auter matter ſoit monſtre. Et auxi le preſumption de ſon brief n'eſt auter mes *quod Nativum in ſervicio ſuo exiſtentem ratione ſervitutis cepit, &c.*," car ſera entendu per ſon brief que il ne perde auter ſervice que bondeſervice. Car ſervice par voie de reteiner ne poit eſtre entendu: car une villein ne poit eſtre retenu ove ſon Seigneur: iſſint ſemble que cele iſſue frank et de frank eſtat fuit un parfite iſſue, le quel eſt bien trove en cele point: et iſſint ſemble que le pleintif recovera, &c. Yelverton: Votre villein poit eſtre retenu ove moy; per que ſera adonques entendu que il eſt tout temps en voſtre ſervice, &c. Newton: Voier il eſt, il puit eſtre retenu ove vous: mes ceo convient eſtre monſtre, ou autrement le Ley entende tout temps que il eſt en le ſervice ſon Seigniour, &c. Yelverton: Tout ſoit que le dit K. fuit trove frank, uncore ceux parolx *in ſervitio ſuo exiſtentem*, conviennent eſtre reſpondus: car poit eſtoier ove cele verdit, que il ſervit le plaintif de ſon bon gre, et ſans aſcun reteiner; en quel cas le plaintif ad cauſe de recoverer damages, &c. **Forteſcue** & Newton: Si le cas fuit tiel, que le dit K. fuit en le ſervice le dit plaintif *de bene eſſe*, le defendant poit monſtrer le
f. 33. matter et abatre le brief; come en cas d'apprentice, ſi le brief ſoit general, *quare un tiel ſervientem ſuum cepit*, le brief et abatable. Et auxi ceo eſt le fort brief en le cas, ſi le brief ſoit porte *quare un tiel apprenticium ſuum in ſervitis ſuo exiſtentem cepit*, le ple eſt

received to falſify this recovery in that point that was tried; which is neither law nor reaſon. And alſo if an abbat or a parſon, patron and ordinary, make default after appearance; or if the parſon pray aid of the patron and ordinary, who make default, the parſon can plead at once, and can give up the action or loſe by default; and his ſucceſſor is without recovery. And the law is the ſame with regard to an abbat; and a recovery by action tried is ſtronger than a ſurrender or a recovery by default; wherefore it ſeems, &c.—And then they were adjourned, and the matter pends by continuance until Eaſter Term next following, &c.

Michaelmas Term, 22 HEN. VI.

THOMAS HUNGERFORD and E. his Wife bring a writ of Treſpaſs againſt one ROBERT, for f. 30 b. that he had taken with force one K., villein of the ſaid E., whilſt the ſaid E. was ſingle, the ſame K. being then in the ſervice of the ſaid E., by reaſon of which the ſame E. has loſt for long time the ſervice of the ſaid K., viz., from ſuch a day to ſuch a day. Whereunto the defendant ſays that the ſaid K. was a free man and of free eſtate, and not a villein; ready. And the others ſay the contrary. And as to loſs of ſervice, he ſays that the ſaid K. was never retained by the ſaid E.; ready.—And the others the contrary.—Proceſs continued againſt the jurors, until now that the inqueſt was ready to paſs, &c. [Here follow opinions of NEWTON, ASHTON, and others.] **Forteſcue:** It ſeems to me that this writ, "Why he took her neyf and ſervant," and this writ, "why he took her neyf and ſervant being in her ſervice" are all one; for the ſtatement that he is her ſervant is really a ſtatement that he is in her ſervice, except other matter be ſhown. And alſo the preſumption of his writ is nothing elſe but "that he took her neyf being in her ſervice by reaſon of ſerfdom," &c.; for it ſhall be underſtood by his writ that he loſes no other ſervice than bondſervice. For ſervice by way of retainer cannot be underſtood; for a villein cannot be retained by his Lord: ſo it ſeems that this iſſue "free and of free eſtate" makes a perfect iſſue, which is well found in this point; and ſo it ſeems that the plaintiff ſhall recover, &c. YELVERTON: Your villein can be retained with me; why then ſhall it be underſtood that he is all the time in your ſervice? &c. NEWTON: True it is that he can be retained by you: but that muſt be ſhown; or otherwiſe the law underſtands that all the time he is in the ſervice of his Lord, &c. YELVERTON: Albeit that the ſaid K. was found to be free; ſtill thoſe words, "being in her ſervice," muſt be anſwered; for it can ſtand with this verdict, that he ſerved the plaintiff of his free will, and without any retainer; in which caſe the plaintiff has cauſe to recover damages, &c. **Forteſcue** and NEWTON: If the caſe were this, that the ſaid K. was in the ſervice of the ſaid Plaintiff *de bene eſſe* the defendant might ſhow the matter and abate the writ; as in the caſe of an apprentice, if the writ be general, thus "Why he f. 33 took ſuch an one his ſervant," the writ is abatable. Alſo this is the ſtrong writ in the caſe; if the writ be brought in theſe words, "Why he took ſuch an one his apprentice, being in his ſervice," it is a good plea to ſay that he was not his apprentice, without more; for the other

bon, a dire que il ne fuit ſon apprentice ſans plus; car les autres parolx ne ſont forſque parolx perſuants, et uncore un apprentice poet departir hors de ſon ſervice, et eſtre retenu ove moy; mes nous n'entendons cele ſinon que ſoit monſtre. [Other opinions follow.] DANVERS: Si jeo done a un home un acre de terre pur moy ſervir quand jeo luy appele en ſon ſervice, s'il ſoit pris per un autre encontre ſa volunte, jeo aurai accion ſur le Statut.—NEWTON, et Tout le Court: Ceo n'eſt iſſint: mes en voſtre cas vous eſtes mis a voſtre diſtreſſe; car ceo eſt un tenure. **Forteſcue:** Quel eſtat donnes luy en le terre? DANVERS: Sir, a tenir a ma volunte. **Forteſcue:** Uncore accion ſur le Statut de laborers vous n'aures.—Et puis T. T. le plaintif releſſerent les damages pur le perte de ſa ſervice, et prient lour Jugement pur le remainder, ſaver damage pur le priſel de lour villein. Et avoient ſolonque ceo que l'Enqueſt avoit taxe.

De Termino Paſche, Anno XXII. HEN. VI.

f. 51 b. **Forteſcue** Chief Juſtice de Bank le Roy demanda un queſtion en le Comon Place quel fuit tiel. Un enfant deins age ad arraye un Aſſiſe devant moy icy en Middleſex et le defendant ad plede en barre un releas ove grarantie ſon anceſtre per fin; le quel ore l'Aſſiſe ſera pris d'enquerer de circunſtance, et de toutz choſes qui poient voider le fin; ou q ie l ſera arcte de reſpondre a cele article *tantum*. A que fuit dit per Touts les Juſtices que l'Aſſiſe en ceo cas ne ſera pris a large d'enquerer de la circunſtance; le cauſe eſt, pur ceo que il eſt un matter de record, et a ceo a force il covient l'enfant reſpondre; et ou il ſera mis a reſpondre l'Aſſiſe ne ſera pris a large. Comme ſi un recoverie ſoit plede en barre envers luy, il covient a cele reſpondre, &c.

De Termino Hillarii, Anno XXVII. HEN. VI.

f. 7 b. En l'Eſcheker Chamber **Forteſcue** demanda ceſt matter. Un fuit arraine devant eux ſur enditement de felony, il conuſt le felony, et diſoit que il fuit Clerk, et il lie come Clerk; et fuit delivre al Ordinary: et apres il fuit pris pur ſuſpection d'auter felony, et ameſne devant eux: et tout ceſt matter devant fuit monſtre a la Court come devant eſt dit: et demande fuit de luy per le Court lequel il fuit meſme le perſon ou nemy; et il coniſoit que il fuit meſme le perſon: ſur que le Roy pria proces envers l'Ordinary, ſcavoir l'Abbe de Weſtmonaſtere de reſponder purque un eſchape ne feroit ajuge envers luy, de ceo que il eſt hors de ſon garde; et in rei veritate il avoit fait ſa purgacion, et ew.—Et fuit tenu cler per Touts les Juſtices que l'ou un eſt atteint de felony per ſa confeſſion demeſne, ou utlagary, ou abjure le terre devant le Coroner, ou approwe, et apres ſoy prend &c. a ſa clergy, et eſt delivre a l'Ordinary, que il ne fera jamais ſa purgacion; et ſi il ſoit delivre per ſa purgacion, il ſera adjuge un eſchape.—[Opinions delivered by FULTHORPE and MARKHAM.]—**Forteſcue:** Moy ſemble que ſur un matter en noncertein ne iſſera *Scire facias;* come pur faire un fine ceo eſt en noncertein: mes *Scire facias* covient iſſer ſur matter de record,

words are only words to the ſame effect; and ſtill an apprentice can depart out of his ſervice and be retained with me; but we do not underſtand that unleſs it be ſhown. [Other opinions follow.] DANVERS: If I give a man an acre of land to ſerve me when I call him into ſervice, if he be taken by another againſt his will, I ſhall have action on the Statute. NEWTON (and all the Court): Not ſo: but in your caſe you are put to your diſtreſs; for it is a tenure. **Forteſcue**: What eſtate do you give him in the land? DANVERS: Sir, to hold at my will. **Forteſcue**: Still an action on the ſtatute of labourers you ſhall not have. And then T. the plaintiff's releaſed the damages for the loſs of his ſervice, and prayed judgment for the remainder of the damages for the taking of their villein. And they had them according to the taxation of the Inqueſt.

Eaſter Term, 22 HEN. VI.

Forteſcue, Chief Juſtice of the King's Bench, aſked a queſtion in the Common Place, as follows:—An infant within age has arrayed an Aſſize before me here, in Middleſex, and the defendant has pleaded in bar a releaſe with warranty of his anceſtor by fine; whether, then, the Aſſize ſhall be taken to inquire into the circumſtances, and of all things which can make void the fine; or whether they (the Aſſize) ſhall be forced to anſwer to this article only. Whereunto all the Juſtices ſaid that the Aſſize in this caſe ſhall not be taken at large to inquire into the circumſtance; the reaſon being, becauſe it is a matter of record, and to this perforce the infant muſt anſwer; and where he ſhall be ſet to anſwer, the Aſſize ſhall not be taken at large. As if a recovery be pleaded in bar againſt him, he muſt anſwer thereto, &c. f. 51 b.

Hilary Term, 27 HEN. VI.

In the Exchequer Chamber **Forteſcue** put a queſtion in this matter. One was arraigned before them upon an indictment for felony; he acknowledged the felony, and ſaid he was a clerk; and he read as a clerk; and he was delivered to the Ordinary; and afterwards he was taken on ſuſpicion of another felony, and brought before them; and all the previous matter was ſhown to the Court as is aforeſaid; and he was aſked by the Court whether he was the ſame perſon or not; and he acknowledged that he was the ſame perſon; whereupon the King prayed proceſs on the Ordinary, viz., the Abbat of Weſtminſter, to anſwer why an Eſcape ſhould not be adjudged againſt him, in that he is out of his ward. And the truth of the matter was, that he had made his purgation; and it was had. And it was held to be clear by all the Juſtices that, in a caſe where one is attainted of felony by his own confeſſion, or by outlawry, or abjuring the realm before the coroner, or approves, and afterwards take himſelf &c. to his clergy, and is delivered to the Ordinary, he ſhall never make his purgation; and if he be ſet free on account of his purgation, it ſhall be adjudged an Eſcape. [Opinions delivered by FULTHORPE and MARKHAM.] **Forteſcue**: It ſeems to me, that in a matter in uncertainty, a "ſcire facias" ſhall not iſſue; as to make a fine that is in f. 7 b.

et certein s'il ne ſoit en la Chancery : car la ils ne avoient ſur matter de record ne ſuggeſtion auter proces forſque "Scire facias." Come un heir monſtre, que ſa mere ad plus dendower que el ne devoit aver ; et ſur ceo pria "Scire facias," il avera. Mes ſur ſuggetion en auters lieux il n'aura forſque Scire facias et Diſtreſſe : iſſint icy a ma conceit que ſur ceſt ne iſſera "Scire facias," mes pluſtoſt Diſtreſſe, come ad eſte dit ſur un preſentment.

De Termino Hillarii, A°. regni regis HEN. VI. xxviii°.

f. 5 b. Deux executors portent brief de Dette vers un autre, retorne a certeine jour : a quel jour le Viconte retourne le breif que le defendant n'ad rien. Et cele jour un des plaintifs fiſt defaut et ne vouloit ſuer. Le queſtion fuit coment ſerra le proces ſue envers le defendant. A que fuiſt dit, que un brief "ad ſequendum ſimul" iſſera vers luy, et un "capias" vers le defendant en lour ambideux nomz. MOILE : Que ſerra fait, ſi a le prochein jour le Viconte retourne que le pleintif n'ad rien dont il poet eſtre ſomons : et auxi que le pleintif n'eſt trove, et ceſtuy defendant fait autre foits defaut? **Forteſcue** : L'autre plaintif ſuera ſomons "ſicut alias" vers ſon compagnon, et "capias alias" en lour ambideux nomz vers le defendant, et iſſint tanque il ſoit utlage. Come ſi "Præcipe quod reddat" de terre ſoit porté par ij, et l'un ne voet ſuer, et le tenant fait defaut, auter avera ſomons "ad ſequendum ſimul," &c. "Grand Cape" en lour ambideux noms, et ſi a cele jour ils ne voloient apperer, l'autre demandant recovera le moite de la terre ; iſſint il covient ſuer le proces en ceſt cas a ma conceit : mes nous voillomus aviſer de ceſt matter, &c.

De Termino Paſchæ, A°. xxviii. HEN. VI.

f. 6. Brief de Maintenance fuit porte par Doreward envers J. D. et W. C. de un maintenance fait par eux le Lundy prochein apres le Feſte de Saint John l'an le Roy, &c., a tiel lieu, &c., en un "Quare impedit" porte par le dit D. envers Ingow de Communi Banco pur le party le dit Ingow envers D. avandit ; ſur que vient LITTLETON pur les defendants, et monſtra come un comiſſion iſſiſt a l'Ordinary de meſme le lieu ou l'Egliſe fuit, long temps devant le maintenance ſuppoſe, a enquerer *de jure Patronatus*, par vertu de quele commiſſion les defendans furent conſtreines par le Ley de Seint Egliſe eſtre jurez d'enquerer "de jure Patronatus" de l'Egliſe avandit le Lundy prochein avant le Feſte de Saint Johan a meſme le lieu, par vertu de quel commiſſion avandit et meſme le jour ils entre autres furent jures, et troverent pur le dit Ingow a meſme le jour que le droit fuiſt a luy, et nient a Doreward, ſans ceo que ils furent culpable d'aſcun maintenance, et puis cele jour. Preſt, &c. Et *alii* culpable puis, en le maner, &c. Preſt. Et ce fuiſt trove pur Doreward. Et VAMPAGE pria Jugment pur le pleintif. [LITTLETON's argument follows.] **Forteſcue** : En voſtre darrein cas ceo

uncertainty: but a "Scire facias" ought to iſſue [only] on a matter of record and certain, unleſs it be in Chancery; for there they have, [whether] on matter of record or ſuggeſtion, no other proceſs except the "Scire facias." As if an heir ſhows that his mother has more for her dower than ſhe ought to have, and thereon pray a "Scire facias," he ſhall have it. But on ſuggeſtion in other places, he ſhall only have "Scire facias" and diſtreſs. So here, in my opinion, a "Scire facias" ſhall not iſſue, but rather diſtreſs, as has been ſaid regarding a preſentment.

Hilary Term, 28 HEN. VI.

Two executors bring a writ of "Debt" againſt another, returnable on a certain day; on f. 5 b.
which day the ſheriff returns the writ, ſaying that the defendant has nothing. And on that day one of the plaintiffs made default, and would not ſue. The queſtion was how to make proceſs againſt the defendant. To which it was ſaid that a writ "ad ſequendum ſimul" ſhall iſſue againſt him, and a "Capias" againſt the defendant in both their names. MOILL: What ſhall be done if on the next day the ſheriff returns that the plaintiff has nothing by which he can be ſummoned; and alſo that the plaintiff is not found, and if the defendant again makes default? **Forteſcue:** The other plaintiff ſhall ſue a ſummons of "ſicut alias" againſt his companion, and a "Capias alias" in both their names againſt the defendant, and ſo on until he be outlawed. As if a "Præcipe quod reddat" for land be brought by two, and one will not ſue, and the tenant makes default, the other ſhall have a ſummons "ad ſequendum ſimul," &c., and the great "Cape" in both their names; and if on that day they will not appear, the other demandant ſhall recover the moiety of the land; and thus the proceſs muſt be ſued in this caſe, as I think; but we will adviſe of this matter, &c.

Eaſter Term, 28 HEN. VI.

A writ of "Maintenance" was brought by Doreward againſt J. D. and W. C., for a main- f. 6.
tenance made by them on Monday next after the Feaſt of St. John, in the year of the King &c. in ſuch a place &c. in a "Quare impedit" brought by the ſaid D. againſt Ingow of the Common Bench, on behalf of the ſaid Ingow againſt D. aforeſaid; whereupon came LITTLETON for the defendants, and ſhowed how a commiſſion iſſued to the Ordinary of the ſame place where the church was, long before the maintenance ſuppoſed, to inquire "of the right of the patronage;" by virtue of which commiſſion the defendants were conſtrained by the law of holy Church to be ſworn to inquire concerning the right of the patronage of the church aforeſaid, the Monday next before the Feaſt of St. John at the ſame place; by virtue of which commiſſion aforeſaid, and on the ſame day, they among others were ſworn, and they found for the ſaid Ingow on the ſame day that the right was his, and not Doreward's; without this, that they were guilty of any maintenance [then or] ſince that day: ready &c. And the others ſay guilty, ſince, in the manner, &c.: ready. And it was found for Doreward. And VAMPAGE prayed judgment for the plaintiff. [LITTLETON's argument follows.]

eſt bon cauſe de juſtification d'un Juror de ceo pleder en barre, ou conveier un "ſans ceo" ſur tiel matter, et en le cas ou nous ſumus a ore; et iſſint me ſemble l'iſſue bien joyne. Et ſi un homme ſoit a la barre, et dit eſt pur le defendant ou plaintif a la Court que le dit home conut le verite del' iſſue, et pria que il poit etre examine par le Court pur dire la verite a la Jury, et le Court luy demanda pur dire le verite, et il a la requeſt de la Court dit ceo que il ſoit en matter, il eſt maintenance juſtifiable: mes s'il uſt venu a la barre de ſon teſt demeſne, et dit pur l'un ou pur l'autre, il eſt maintenance, et il ſera puniſhe pur ceo. Et ſi les Jurors veignent a un home ou il demurre en le Pais pur aver le conuſance de la verite del matter, et il eux enforme, il eſt juſtifiable: mes ſi vient a les Jurors ou laboure pur eux enformer de la verite, il eſt maintenance, et ſera puny pur ceo come Fortescue diſoit. Et ceo fuit admitte par le Court, &c.

Nota que fuit dit per Fortescue et ſes Compagnons, ſi un fait ſoit pleade en barre en aſcun action d'un acre de terre, ou de plus, ceſtuy que eſt party ou prive dira aſſes bien "nient compris" ou "rien paſſa" &c., "nient ſon fait:" mes celuy que eſt eſtrange ne dirra "nient compris," mes ſolement que il "ne enfeoffa pas par ſon fait." Et iſſint fuit rule en un Replegiari in Banco Regis. Et fuiſt dit en meſme le ple par Fortescue, que home ſur grant des ſervices fait a luy par attornement del tenant ſans aſcun paiment, s'il diſtraine et reſcous ſoit fait a luy, que il avera aſſiſe en meſme le maner d'un retorne, et il ad retorne (rente?) et il ad diſtreint ſans autre ſeiſon il avera Aſſiſe. (*Quære de hoc, quia credo quod male, &c.*)

De Termino Trinitatis, A°. xxviij. Hen. VI.

f. 13. Un Clell' ſuiſt un brief de Dette ſur un obligation vers T. T. dit que l'obligation fuit endoſſe ove tiel condition, que ſi le plaintif et il eſtoient a l'arbitrement et agard de un J. et C. arbitrours par eux indifferent eſleus *ſuper jure titulo et poſſeſſione cæterarum terrarum tenementorum* en Saint Albons, adonque l'obligation perdroit ſa force; et dit en fait, que tiel jour an et lieu en Londres ils arbitrerent en tiel forme, &c., que il ad parfourme; jugement ſi accion. A que le plaintif diſoit, que bien et veritie eſt, que ils eux mirent en garde come devant; mes il dit que en auter lieu en auter Counte meſme le jour et an, et devant le temps de le dit agard agarderent en le maner come ils dient; et ouſtre ils agarderent [ſi] nous tindrons tant de terre en le dit ville de quel nous fuiſſomus adonques ſeiſis, et tenons a volunte de l'Abbe de Saint Albons a nous et a noſtre heir par vierge ſolonque le cuſtome de la dit ville, dont le dit Abbe eſt ſeiſi, ſans aſcun interuption de luy, ſes heir, ou de aſcun en ſon nom, ou par aſcun excitation ou procuration fait par luy de nous ouſter, adonque l'obligation perdroit ſa force; et diomus en fait, que il excita le dit Abbe, pur ceo que le dit terre fuit tenu de luy ſolonque le dit cuſtome a volunte, de nous ouſter, par force de quel il nous ouſta par ſon excitacion; ſans ceo que ils arbitrerent come il ad dit; le quel matter, &c. A que le dit T. diſoit, que a le dit lieu jour et an, ſcavoir en le heure de vj maunger

Forteſcue: In your laſt caſe (VAMPAGE put the caſe of a juror finding for him againſt **Forteſcue**) it is a good cauſe of juſtification of a juror to plead it in bar, or convey a "without this" on ſuch matters; and [alſo] in the caſe in which we now are; and ſo I think the iſſue well joined. And if a man be at the bar, and it be ſaid for the defendant or plaintiff to the Court, that the ſaid man knows the truth of the iſſue, and it be prayed that he may be examined by the Court to tell the truth to the jurors, and the Court aſk him to ſpeak the truth, and he, at the requeſt of the Court, ſay what he knows in the matter, it is juſtifiable maintenance; but if he had come to the bar of his own will, and had ſpoken for one or the other, it is maintenance, and he ſhall be puniſhed for it. And if the jurors come to a man where he lives, in the country, in order to aſcertain the truth of the matter, and he informs them, it is juſtifiable; but if he comes to the jurors, or labours to inform them of the truth, it is maintenance, and he ſhall be puniſhed for it, as **Forteſcue** ſaid. And this was admitted by the Court, &c.

Note, that it was ſaid by **Forteſcue** and his aſſociates, if a deed be pleaded in bar in any action for an acre of land or more, he who is party or privy ſhall rightly ſay "not compriſed" or "nothing paſſed" or "not his deed;" but he who is a ſtranger ſhall not ſay "not compriſed," but only that he "did not enfeoff by his deed." And ſo it was ruled in a Replevin in the King's Bench. And it was ſaid in the ſame plea by **Forteſcue**, that if a man have a grant of ſervices made to him, and then upon attornment of the tenant, without any payment, diſtrain, and reſcue be made from him, he ſhall have an aſſize in the ſame manner as a return, and [if] he has a rent and has diſtrained without any other ſeiſin he ſhall have an aſſize. (*Quære* this, for I believe that it is wrong).

Trinity Term, 28 HEN. VI.

One Clell' ſued a writ of "Debt" on a bond againſt T. T. ſaid that the bond was endorſed with ſuch condition, that if the plaintiff and he ſtood by the arbitration and award of J. and C., arbitrators by them indifferently elected, "upon the right title and poſſeſſion of certain lands and tenements" in St. Alban's, then the obligation ſhould loſe its force; and he ſays in fact, that on ſuch a day, year, and place in London, they awarded in the form following, &c.; which he has performed. Judgment whether action, &c. To which the plaintiff ſaid, that it is very true that they ſubmitted to arbitration as aforeſaid; but he ſays that in another place, in another county, on the ſame day and year, and before the time of the ſaid award, they awarded in manner as they ſay; and moreover they awarded that if we ſhould hold ſo much land in the ſaid town of which we were then ſeiſed and held at the will of the Abbat of Saint Alban's to us and our heirs by the rod according to the cuſtom of the ſaid town, of which the ſaid Abbat is ſeiſed, without any interruption by him, his heirs, or by any in his name, or by any excitation or procuration made by him to ouſt us, then the bond ſhould loſe its force. And we ſay in fact, that he excited the ſaid Abbat, fo. 13.

ils agarderent come nous avons dit; ſans ceo que ils firent aſcun agard devant cele heure; le quel matter, &c. A tiel replication fait par le maner nul Ley nous mette a reſponder, &c. **Forteſcue**: Ore eſt a voir ſi ceſte replicacion encontre le barre ſoit bon ou nemy. Et a le primes moy ſemble que quand ils ſe mirent en gard *ſuper jure titulo et poſſeſſione*, ſera entendu que title droit et poſſeſſion parenter eux ſont mis en agard et nient le poſſeſſion ne droit deſtranger; car mettons que ils uſſent agarde que il ne ſeroit de le conſel l'Abbe en ſon maner[1] de la dit terre, s'il fuit home apris de luy,[2] n'eſt pas le agard voide? Jeo di que ſi. Iſſint icy, quand l'Abbe luy ouſta par droit que il avoit, meſque il luy enforma de ſon droit, et l'Abbe luy ouſtra, il ſera entendu le fait l'Abbe, et de cele droit et poſſeſſion ils ne avoient aſcun power de faire agard: et iſſint l'agard quant a cele point eſt void. Et ſi le replication ſoit bon, donque le ple en diſtruction n'eſt pas bon: car il n'eſt pas dedit de eux mes ils firent agard devant le temps de lour agard: car le treſpas devant heure n'eſt pas bien: car poit eſtre enſemble que l'un agard et l'autre furent faits un meſme heure, et l'un devant l'autre: et iſſint le travers nient bon. Et pur ceo le ple ne vault, &c.

De Termino Michaelis, A°. xxx. Hen. VI.

f. 2. Nota que fuit dit per **Forteſcue** que ſi j'ay a nom W. D. et jeo porte un brief envers un autre par le nom de J. D. et le defendant admet mon nom, et jeo recover par ceſt nom.; en apres ſi jeo voile porter autre action vers un eſtranger par mon droit nom, ceſt-aſſavoir W. D., et il voile pleder ceſt matter par le primer brief envers moy a moy eſtopper, jeo ne ſerai eſtoppe per cele: car ſi jeo ſera eſtoppe donque jeo n'avera unque bon action vers eſtranger. Car ſi jeo voile porter action par le nom J. D., il diroit que mon nom eſt W. D. et nient J. D. come le brief eſt, et iſſint abatera mon brief; et pur ceo ceſty que eſt eſtranger a la primer action n'aura ceſt ple per voy deſtoppel envers moy, mes celuy que eſt party aura aſſes bien le ple, et nient un eſtranger. (Quære de ceſt matter: car jeo ſcay bien que en pluſors autres caſes celuy qui eſt eſtranger aura avantage envers celuy que eſt prive, come s'il ſoit trove baſtard, ou certifie, &c.)

De Termino Hillarii, A°. xxx. Hen. VI.

f. 2 b. Un fuit endite come acceſſorie a 4 homes par ceux paroles *J. C. ſciens ipſos iv homines feloniam prædictam feciſſe apud D. felonice receptavit.* **Forteſcue**: Ceſt enditement n'eſt pas bon envers celuy qui eſt acceſſarie: car il ne appiert quel de eux il avoit receu: donque il eſt en non certeine, car poit eſtre dit, s'il accepte aſcun de eux il eſt felonie. Jeo grante bien,

[1] I preſume a miſtake for "aſcun maner."

[2] I preſume this to be a miſtake for "appert," or "apprentis," or "apris de ley."

becauſe the ſaid land was held of him according to the ſaid cuſtom, at will, to ouſt us; by force of which, he ouſted us by his excitation; without this that they arbitrated as he has ſaid; which matter, &c. To which the ſaid T. ſaid, that on the ſaid day, place, and year, namely, at the hour of ſix, they awarded as we have ſaid; without this that they made any award before that hour, which matter, &c. To ſuch replication made in this way no law ſets us to anſwer, &c. **Forteſcue:** Now we muſt ſee whether this replication againſt the bar be good or not. And firſt, it ſeems to me that, when they ſubmitted themſelves to arbitration, "on the right title and poſſeſſion," it muſt be underſtood that the title right and poſſeſſion as between them are ſubmitted to arbitration, and not the poſſeſſion or right of a ſtranger. For let us ſuppoſe that they had awarded that he ſhould not be of counſel for the Abbat in any manner concerning that land; if he were one learned in the law, is not the award void? I ſay it is. So here; when the Abbat ouſted him by the right that he had, although he informed him of his right, and the Abbat ouſted him, it ſhall be underſtood as the act of the Abbat; and concerning that right and poſſeſſion they had no power to make an award; and ſo the award on that point is void. And if the replication be good, then the plea in deſtruction thereof is not good; for it is not denied of them, but they made award before the time of their award; for the treſpaſs before the hour is not well: for it may well be that both awards were made at the ſame hour, and yet that one was made before the other; and ſo the traverſe is not good. And therefore the plea is worthleſs, &c.

Michaelmas Term, 30 Hen. VI.

Note, that it was ſaid by **Forteſcue** that if I be named W. D., and I bring a writ f. 2. againſt another by the name of J. D., and the defendant admit my name, and I recover by this name; afterwards if I wiſh to bring another action againſt a ſtranger by my right name, namely W. D., and he wiſhes to plead this matter (in the firſt writ) againſt me to eſtop me, I ſhall not be eſtopped thereby: for if I ſhould be eſtopped, then I ſhould never have a good action againſt a ſtranger. For if I would bring an action by the name of J. D., he would ſay that my name is W. D., and not J. D. as the writ ſays, and ſo would abate my writ; and therefore he who is a ſtranger to the firſt action ſhall not have this plea by way of eſtoppel againſt me; he who is a party may plead it well enough, but not a ſtranger. (*Quære* of this matter: for I know well that in many other caſes a ſtranger ſhall have an advantage againſt him who is privy: as if he be found baſtard, or be certified &c.)

Hilary Term, 30 Hen. VI.

One was indicted as acceſſory to four men, by theſe words. "J. C., knowing the fo. 2 b. aforeſaid four men to have committed the ſaid felony at D. feloniouſly did receive." **Forteſcue:** This indictment is not good as againſt him who is acceſſory; for it does not appear which of them he had received; ſo it is in uncertainty; for it may be ſaid that if he

mes jeo voile ſcaver quel fuit l'entent des enditors; de luy aver endite come acceſſarie a touts, ou a deux, ou a un; il eſt en noncertein: car paraventure lour entent poit aver eſte de luy enditer forſque come acceſſarie a un, et paraventure a un eſtranger, le quel n'uſt eſte bon; et pur ceo l'enditement voile aver eſte, *eos apud Dale felonice receptavit.* Et pur ceo l'enditement n'eſt pas bon envers luy. Et iſſint fuit l'opinion de touts.

En bref "d'Error" porte envers celuy qui fuit party, un "Scire facias" iſſiſt envers celuy qui fuit party, et un autre envers ceſty qui eſt tenant, retornable a certain jour. A quel jour les parties appererent, et le plaintif aſſigna ſes errors. Le tenant allegea jointenancy ove un auter. Et le plaintif pria que ils alerent a l'examination des errors. Et dite fuit par le tenant que ce ſeroit inconvenient devant que le ple le tenant ſoit trie: car poit eſtre que ceux qui ſont tenants purront luy barrer de la tenancy, et pur ceo de proceder a les examinations des errors devant que le brief ſoit bon envers le tenant, ſeroit inconvenient, &c. **Forteſcue:** Moy ſemble le contrary: car nul poit pleder en barre a l'action forſque celuy que eſt partie en ſon brief, ou ſon heir: car nul que eſt eſtrange poit pleder releas envers luy ne l'heir aura ſon age en ceſt action; et n'eſt pas inconvenient meſque alamus a l'examination des errors; et s'il y ad error, le tenant ne poit rien dire pur ſaver le tenancy, donque le Jugement ſera reverſe, et le plaintif reſtore. Et Sire, ſi le plaintif en ceſt action n'uſt eue forſque un "Scire facias" envers le partie, et nient envers le tenant, le Juſtices duiſſent aler a l'examination des Errors entre eux. Et ſi les Juſtices purront entendre que il y ad error, donque il poit prier "Scire facias" vers le tenant, s'il ſcait rien dire purque il ne ſera reſtore. Purque, &c.

De Termino Michaelis, A°. xxxi. Hen. VI.

f. 8 b. En un brief de Maintenance, porte per Clement Tailour vers Jeretrude, et autres trois. Les autres plederent de rien culpables, etc. Et Jeretrude monſtra coment ceſty que il ſuppoſe que il doit aver maintaine fuit ſon ſervant, et monſtre coment il fuit retenu par un an: et il pria et retenut un Moile apprentice de Ley eſtre a conſel ove ſon ſervant, per force de quel il fuit a conſel ove luy en l'action porte per le dit C. envers le dit ſervant, le quel eſt meſme le maintenance, &c. Jugement, ſi action, &c. Danby: A ceo domus nous que le dit Jeretrude delivra a T. T. et J. D. x livres, de ſes deniers propres a diſtribuer entre les homes de la Countie ou le primer action fuit porte, ſolonque lour diſcrecion pur eyder le dit ſervant, le quel matter, &c. et de quel il ad conceu ceſt action. Moile: Il ne delivra pas. Preſt, &c., Et trouve fuit les iij de rien culpables, &c., et l'auter ple encounter Jeretrude: ſur que C. avoit Jugement de recoverie. Et ſur ceſt matter J. ſuit un brief de Error in Bank le roy, et aſſigna pur error, entant que les iij plederent de rien culpables, et le iv

receive any of them it is felony. I grant it; but I wiſh to know what was the intent of the indictors; to have him indicted as acceſſory to all, or to two, or to one? it is in uncertainty: for perhaps their meaning may have been to indict him only as acceſſory to one, and perhaps to a ſtranger, which would not have been good; and therefore, the indictment ſhould have been, "He felonioufly received them at Dale." And, therefore, in my opinion, the indictment is not good againſt him. And this was the opinion of all.

In a writ of "Error" brought againſt one who was party, a "Scire facias" iſſued againſt him who was party, and another againſt him who was tenant, returnable on a certain day. On which day the parties appeared, and the plaintiff aſſigned his errors. The tenant alleged joint-tenancy with another. And the plaintiff prayed that they ſhould go to the examination of the errors. And it was ſaid by the tenant, that that would be inconvenient, before that the plea of the tenant was tried; for it might happen that thoſe who were tenants would be able to bar him of the tenancy; and therefore to proceed to the examination of the errors, before the writ be [held] good againſt the tenant, would be inconvenient, &c. **Forteſcue:** I am of a contrary opinion; for none can plead in bar to the action except one who is a party in his writ, or his heir; for no one who is a ſtranger can plead a releaſe againſt him, nor ſhall the heir have his age in this action; and there is no inconvenience, although we proceed to the examination of the errors; and if there be error, the tenant can ſay nothing to ſave the tenancy; then the judgment ſhall be reverſed, and the plaintiff reſtored. And if the plaintiff in this action had only ſued a "Scire facias" againſt the party, and not againſt the tenant, the Juſtices would proceed to the examination of the errors between them. And if the Juſtices ſhall determine that there is error, then he can pray a "Scire facias" againſt the tenant, to aſcertain if he can ſay anything why he ſhall not be reſtored. Wherefore, &c.

Michaelmas Term, 31 HEN. VI.

In a writ of "Maintenance," brought by Clement Tailour againſt Jeretrude and three others, the others pleaded Not guilty, &c. And Jeretrude ſhowed that the one whom he (the plaintiff) ſuppoſed that ſhe had maintained, was her ſervant, and how that he was retained for one year: and ſhe prayed and retained one MOYLE, apprentice in the law, to be of counſel for her ſervant, by reaſon whereof he was of counſel for her in the action brought by the ſaid C. againſt the ſaid ſervant; which is the ſame maintenance, &c. Judgment whether action, &c. DANBY: To this we tell you that the ſaid Jeretrude delivered to T. T. and J. D. 10*l.* of her own money, to be diſtributed at their diſcretion amongſt the men of the county where the firſt action was brought, and for the purpoſe of aiding the ſaid ſervant; which matter &c.; and whereupon he has founded this action. MOYLE: She did not deliver: ready &c. And the three were found Not guilty; and the other plea went againſt Jeretrude; on which C. had judgment of recovery. And in reſpect f. 5 b.

juſtifia, et le plaintiff replia un matter que fuit un ſpecial maintenance en le perſon le dit J. le quel ne fuit maintenance en les iij, et iſſint ſeveral maintenance: ſur queux il doit aver ſui ſeveral actions: et entant que le Court ne abatiſt le brief, ils errerent. [After the arguments of Pole, Moyle, and others,] **Fortescue**: Ceſt action quant a cele point eſt bon; car come ad eſte dit, en brief de "Decies tantum" jeo aurai envers pluſors un brief, et envers les embraceors enſemble tout en un action. Et iſſint jeo averai un "Præmunire facias" envers les procurators, notaries, concellors, et les principals enſemble. Et iſſint jeo auray brief de "Champarty" envers pluſors, et jeo counterai envers un que il eſt preſt pur maintener le querele pur aver un acre de terre de ceo que fuit en demande: le ſecond un auter acre: le tiers pur aver les damages recoveres en meſme l'action; et uncore l'action eſt bon; le cauſe eſt, pur ceo que ceux actions ſont pris pur un act que eſt entier a la party greve, et les damages et grevances a la party ſur le barre ove le recoverè eſt un en ceo, et ceux ſont pris accordant a le Statut. Et ſi pluſors ſont ove le plaintif a la barre en propre perſon, le preſence l'un n'eſt le preſence l'auter, uncore jeo aurai un brief de "Maintenance." Et iſſint eſt le cas de "Quare impedit" avant dit un bon cas. Et iſſint eſt ſur "Attachment ſur un prohibition" envers le officer, le procurator, et le plaintif; et uncore le fait l'un n'eſt le fait l'auter; *nec e contra*, &c. et uncore l'action envers eux jointment eſt bon, pur ceo que le vexation envers le party eſt un que le ſuit eſt; et pur ceo le action fuit bon. Et uncore, come ad eſte dit, il eſt nul departer; car poit eſtre dit que il ne dona les deniers per lour procurement: et le cas icy eſt le meliour, pur ceo que ils ſont trove de rien culpable. Et iſſint quant a cel' ils firent bon Jugement, &c. Moile: Uncore ils errerent en un auter point; ceſt aſſavoir entant come en le replication il dit que le dit *Jeretrude tradidit et deliberavit de denariis ſuis propriis quibuſdam T. H. et J. D. x libras ad diſtribuendum inter homines infra comitatum prædictum tunc et ibidem reſidentes ſecundum diſcretionem eorum, ad manutenendum et ſuſtentandum querelam prædictam pro parte famuli prædicti*, que eſt noncertein; car a ma conceit il poit bien donner ſes deniers pur eſtre diſtribues enter les homes appris de Ley pur eſtre ove luy. Et par ſon replication il ne monſtre le contrary: et iſſint le replication eſt en noncertain en maner: car il n'appert l'un ne l'auter. Et auxi il n'ad pas allege que ils diſtribuerent les deniers enter aſcuns homes: iſſint nul matter de maintenance appert en le replication. Purque, &c. **Fortescue**: Il eſt a voir le quel le maiſtre pourroit doner deniers a le conſel ſon ſervant, ſoit loyal ou nemy; et Sire, jeo di que non: car home ne poit plus faire pur ſon ſervant en tiel cas que prier un tiel Juſtice que le matter ſon ſervant poit haſtivement eſtre ſpede come la Ley veut. Et iſſint poit prier un home de Ley eſtre a conſell ove ſon ſervant come le Ley veut, pur

of this matter Jeretrude ſued out a writ of "Error" in the King's Bench, and aſſigned for error that the three pleaded Not guilty, and that the fourth juſtified; and the plaintiff put forward by way of reply a matter which was a ſpecial maintenance in the perſon of the ſaid Jeretrude, and was not maintenance as to the three; and ſo, it was ſeveral maintenance on which he ought to have ſued ſeveral actions. And inaſmuch as the Court did not abate the writ, they were in error. [After the arguments of POLE, MOYLE, LITTLETON, and HALTOFT.] **Forteſcue:** This action, on that point, is good; for, as has been ſaid in a writ of "Decies tantum," I ſhall have a writ againſt a number of perſons, and againſt the embraceors all together in one action. And ſo I ſhall have a "Præmunire facias" againſt the procurators, notaries, counſellors, and the principals together. And ſo I ſhall have a writ of "Champarty" againſt ſeveral; and I ſhall count againſt one that he is ready to maintain the quarrel, in order to have one acre of the land which is in demand; and againſt the ſecond [that he is ready, &c.] another acre; and againſt the third [that he is ready, &c.] to have the damages recovered in the ſame action; and ſtill the action is good; the reaſon being, that thoſe actions are brought for one act which is entire to the party wronged, and the damages and wrongs to the party in the barratry (?) and the recovery are one thing therein, and they are taken in accordance with the Statute. And if ſeveral perſons are with the plaintiff at the bar in proper perſon, the preſence of the one is not the preſence of the other; and ſtill I ſhall have a writ of "Maintenance." And ſo the caſe of "Quare impedit" before-mentioned is a good caſe. And it is the like on "Attachment on prohibition" againſt the officer, procurator, and plaintiff; and ſtill the act of one is not the act of the other; nor *e contra*, &c.; and ſtill the action againſt them jointly is good, becauſe the troubling of the party who ſues is a ſingle thing, as is the ſuit; therefore the action was good. And again, as has been ſaid, there is no departure; for it may be ſaid that he did not give the money by their procurement; and the caſe here is the ſtronger, becauſe they are found Not guilty. And ſo as to this they gave a good Judgment, &c. MOILE: Still, they erred in another point; viz., inaſmuch as in the replication he ſaid that the ſaid Jeretrude "handed over and delivered of her own money to T. H. and "J. D. ten pounds, to diſtribute among men within the ſame county then and there reſiding, "according to their diſcretion, to maintain and ſuſtain the quarrel aforeſaid on behalf of the "ſaid ſervant," which is noncertain; for, in my opinion, ſhe may well give her money to be diſtributed among men learned in the law, to be with him; and by his replication he does ſhow the contrary; and ſo the replication is uncertain in this way; for there appears neither one thing nor the other. And alſo, he has not alleged that they diſtributed the money among any perſons: ſo, no matter of maintenance appears, &c. in the replication. Wherefore &c. **Forteſcue:** It is to be ſeen whether for the maſter to give money to the counſel of his ſervant, be legal or not. And, Sir, I ſay that it is not; for a man cannot do more for his ſervant in ſuch caſe than pray the Juſtice that his ſervant's buſineſs may be quickly diſpoſed of according to law. And ſo, he can pray a man of law to be of counſel with his ſervant as the law allows, for the deliverance of his ſervant; for if he loſe the

le deliverance de ſon ſervant; car s'il perde le ſervice de ſon ſervant, il ad ſon remedy vers le ſervant, et auxi il ne covient de paier ſon ſalary, s'il ſuſtreit ſon ſervice, et iſſint le maiſtre luy poit garder ſans damage. Et de prover que le deliverance des deniers eſt maintenance, jeo proveray: car per les deniers le matter pur le ſervant poit eſtre enforce de ſa party; iſſint que il poit entendre que l'auter party eſt per le plus long temps delay en ſa ſuit, ou barre, ou recovery ew envers luy per ceo, adonques il eſt maintenance nient congeable, &c. Et que eſt iſſint appert; purque quant a ceo paſſes ouſter, car il n'eſt pas congeable, &c. Moile: Donques le ple en barre n'eſt pas bon: car il ad dit en ſon ple que il retenut un W. Moile apprentiſe eſtre a conſel ove ſon dit ſervant, lequel reteiner ne poit eſtre ſinon per done des deniers; car c'eſt parole "retinuit" enclude en ſoy meſme un cauſe d'action envers ceſty que fiſt le reteiner pur les deniers a luy promis ſur le reteiner. Et ſi nul denier en certein ſoit a luy promis, donques il aura tant en comon droit luy done; come a Serjeant xl deniers, et a l'attorney xx deniers de ceſty que luy retenut, lequel eſt maintenance en luy; car il ne poit doner de ſes deniers propres: purque le ple n'eſt pas bon. **Fortescue**: A ma conceit le ple eſt bon: car jeo purrai retenir un home eſtre ove vous a conſele ſans aſcun denier a luy done per moy; et meſque jeo face le reteinir uncore il n'aura jammes accion vers moy. Et ſi ſon ple en barre ſoit bon a un comon entent il ſuffiſt; et iſſint ceſt ple eſt aſſes bon: purque paſſes ouſtre, &c. Moile: Le replication n'eſt par bon pur un auter cauſe: car il ad dit que le dit J. delivre de ſes deniers propres x livres a T. H. et J. B. *ad diſtribuendum inter homines ad tunc et ibidem commorantes, ad manutenendum et ſuſtentandum querelam prædictam pro parte ſervientis ſui prædicti*, et n'ad pas allege en fait que ils diſtribuerent aſcuns deniers; en quel cas s'ils ne firent rien ove les deniers, ils rendront accompt a J.: et auxi poit eſtre que il eux prohibita apres que ils ne firent rien le ceo, et s'ils ne firent rien mes retindrent les deniers, donques il ne fuit greve per cele. Car ſi jeo prie un home eſtre ove vous pur eyder vous, et il ne eyde vous, l'auter n'aura jammes action envers moy: nient pluis icy. Et auxi le replication eſt en noncertein. Purque &c.

f. 10. **Fortescue**: Moy ſemble le contrary; car il eſt prohibite que nul entromet perenter party et party; et s'il ad fait choſe prohibite, que eſt ſurmis par le replicacion, donque il eſt bon; et ceo appert aſſets bon; car il ad allege que J. delivra de ſes deniers a eux come appert a devant, lequel eſt un entromettant del matter nient congeable. Car ſi un eſtranger done deniers a un Juror que eſt empanelle pur dire ſon verdit pur l'un party, meſque il ne ſoit unques Juror, il eſt cler maintenance, et choſe prohibite par le Statut: car ſi il uſt monſtre que les dits T. H. et J. B. uſſent diſtribues les deniers a aſcun, ceo uſt eſte maintenance en lour perſons; donque le deliverance des deniers adeprimes fuit le maintenance en ſon perſon, et nient en le diſtribucion de les autres, et iſſint le deliverance de les deniers a par luy a eux pur diſtribuer pur maintenir le ple pur le party ſon dit ſervant nient congeable; le quel eſt

ſervice of his ſervant he has his remedy againſt the ſervant; and alſo he need not pay his wages, if he withdraw his ſervice; and ſo the maſter can keep him without damage. And I will ſhow that the deliverance of the money is maintenance; for by the money the matter on the ſervant's ſide can be ſo ſtrengthened that it may be underſtood that the other party is the longer time delayed in his ſuit, or barred, or that recovery may be had againſt him thereby; ſo it is maintenance not congeable, &c. And that it is ſo is clear; wherefore as to this, paſs over; for it is not congeable, &c. MOYLE: Then the plea in bar is not good; for he has ſaid in his plea that he retained one W. MOILE, apprentice, to be of counſel with his ſaid ſervant; which retainer cannot be except by gift of money; for this word "retained" includes within itſelf a cauſe of action againſt him who retained for the money promiſed to him on the retainer. And if no certain ſum of money be promiſed to him, then he ſhall have ſo much given to him of common right, that is to ſay, to a Sergeant forty pence, and to an Attorney twenty pence, by him who retained him, which is maintenance in him; for he cannot give of his own money; wherefore the plea is not good. **Forteſcue:** In my opinion the plea is good: for I can retain a man to be of counſel with you, without any money being given to him by me; and although I retain him, ſtill he ſhall never have action againſt me. And if his plea in bar be good to a common purport, it ſuffices; and ſo this plea is good enough: wherefore paſs over, &c. MOILE: The replication is not good for another reaſon; for he has ſaid that the ſaid J. delivered of his own money ten pounds to T. H. and J. B. "to diſtribute among men then and there reſiding, to maintain and ſuſtain the quarrel aforeſaid on behalf of the ſervant aforeſaid," and has not alleged in fact that they diſtributed any money; in which caſe, if they did nothing with the money, they ſhall render account to J. And alſo, it may be that he forbad them afterwards that they ſhould do nothing therewith: and if they did not do anything, but kept the money, then he was not injured thereby. For if I pray a man to be with you to help you, and he helps you not, the other ſhall never have an action againſt me; no more in this caſe. And alſo the replication is noncertain. Wherefore, &c. **Forteſcue:** The contrary is my opinion: for it is forbidden for any to interpoſe between party and party; and if he has done a forbidden thing, which is ſurmiſed by the replication, then it is good; and this appears well enough; for he has alleged that J. delivered ſome of his own money to them, as appears before; which is a meddling in the matter not congeable. For if a ſtranger give money to a Juror who is empanelled, to give his verdict for one ſide, although he may never be a Juror it is clear maintenance, and prohibited by the Statute: for if he had ſhown that the ſaid T. H. and J. B. had diſtributed the money to anyone, this would have been maintenance in their perſons; therefore the delivery of the money firſt of all was maintenance in his perſon, and not the diſtribution by the others; and ſo the delivery of the money by him to them to diſtribute for the maintenance of the plea on the part of his ſervant, was not congeable; which is ſufficient cauſe of maintenance in his perſon, and ſo the

ſufficient cauſe de maintenance en ſon perſon, et iſſint le replication ſuffice. Purque le Court affirma le Jugement. Et le plaintif en le premier action pria execucion : et avoit, &c.

En brief d' " Attaint " porte vers un come fits et heir ſur un faux ſerment, ew perentre le plaintif et un adonques tenant pere ceſty defendant. Pole : Jugement de brief : car le brief ne prove que il eſt tenant par nul parole deins le brief, et en cheſcun " Attaint " ſera un ſommons come en Aſſiſe de " Mort d'anceſtor " et " Juris utrum " le brief eſt, " Summoneas tiel qui terram illam tenet," et iſſint ſera ceſt brief, et iſſint il n'eſt. Purque, &c.

f. 10 b. **Fortescue :** Le brief eſt aſſes bon : car le brief ſera porte vers le pere ſans aſcun Sommons vers luy : car le Ley entende que le tenancy continue en ſon pere, pur ceo que ceſt action eſt fonde ſur le premier record ; iſſint le Ley entende le tenancy continue en ſon perſon : et par meſme le reaſon ſera entendu que eſt defcendu a le heir, et iſſint ſera entendu tenant a or. Et auterfois au tiel action fuit porte envers luy come icy ; mes ceſt parole *Heir* fuit enterleſſe, et pur ceo cele brief fuit abatu. Et iſſint ceſt brief or eſt aſſes bon : purque reſpondes, &c.

Un Aſſiſe porte per un maiſtre d'un Hoſpital. Le tenant plede en barre, et le ſeiſin et diſſeiſin furent troves, &c. Littleton pria Jugement pur le plaintif. Yong : Il covient adeprimes enquerer de la colluſion, et s'il ad droit ou nemy, &c. Littleton : Ceo ne covient : car voies icy les lettres patents le Roy Richard le II. par les queux il avoit licence de purchaſer les tenementz, &c. et l'auter de granter de que il furent purchaſes. Et ne entendons que covient en ceſt brief de enquire de la colluſion. **Fortescue :** Jeo entende or que il ne covient enquerer de la colluſion, entant que trove eſt par verdit le ſeiſin et diſſeiſin ; et comment ils aviendrent a la tenancy il appert par record, et ceo par ſufficient licence. Et iſſint me ſemble que ils recovereront. Yong : Poit eſtre que il et ſes confreres ont fait alienacion puis cele temps, ou que les tenements ſont deveſtus de eux en autre liial maner : et entant que ce poit eſtre entendu, il covient de neceſſity enquerer de la colluſion, &c. **Fortescue :** Ceo ne ſerra entendu come vous dites, ſans ceo que il fuit monſtre. Et pur ceo vous plaintiff recoveres votre ſeiſin et voſtre damage, &c. (*Vide talem materiam* en brief de " Droit " Term. Trin. An. 5 Ed. 3.)

Un Bille fuit porté en Bank le Roy per David Selby de Tranſgreſſion vers un eſtant en le garde de le Mareſchal. Et ils plederent a l'iſſue : qui fuit trove pur le plaintif. Pole pria Jugement, pur le plaintif. [After Moyle, Yonge, Yelverton, and Yonge.] **Fortescue :** Come me ſemble il eſt aſſes : car meſque le cauſe n'appert pur quel il fuit en priſon, il ſera entendu pur loyal cauſe ; car poit eſtre que pur aſcun offence fait a la Court, ou aſcun auter ſuggeſtion fait a nous des queux nous ne ferons unques record. Et iſſint pluſors ſont commis a la garde en ceſt Place ſovent fois, le quel ſera pluſtoſt entendu loyal que auterment. Et pur ceo recoveres vos damages, &c.

f. 11. Nota, quand un fuit arraine ſur enditement de Robbery, et l'Enqueſt fuit pris a la barre

replication is ſufficient. Wherefore the Court affirmed the Judgment. And the plaintiff in the firſt action prayed execution; and he had it, &c.

In a writ of "Attaint" brought againſt one as ſon and heir on a falſe oath [in an Aſſize], had between the plaintiff and one then tenant, father of this defendant. POLE: Judgment of the writ; for the writ does not prove that he is tenant by any word in the writ; and in every "Attaint" there muſt be a ſummons as in an Aſſize of "Mordanceſtor" and a "Juris utrum"; and the writ is, "ſummon ſuch an one who holds that land"; and ſo this writ ſhould be, which it is not. Wherefore, &c. **Forteſcue:** The writ is good enough; for the writ ſhall be brought againſt the father, without any ſummons againſt him; for the law intends that the tenancy continued in his father, becauſe this action is founded on the firſt record; ſo the law intends that the tenancy continues in his perſon; and for the ſame reaſon it ſhall be underſtood that it has deſcended to the heir; and ſo he ſhall be underſtood as the now tenant. And a ſimilar f. 10 b.
action was heretofore brought againſt him; but the word "Heir" was omitted, and therefore that writ was abated. And ſo this preſent writ is good enough: wherefore anſwer, &c.

An Aſſize was brought by a Maſter of a Hoſpital. The tenant pleaded in bar; and the ſeiſin and diſſeiſin were found, &c. LITTLETON prayed Judgment for the plaintiff. YONG: We muſt firſt inquire into the colluſion, and whether he has right or not, &c. LITTLETON: That muſt not be; for ſee here the letters patent of King Richard II., whereby he had licence to purchaſe the tenements, &c.; and the other, of whom they were purchaſed, to grant. And we do not think that it is neceſſary in this writ to inquire into the colluſion. **Forteſcue:** I think now that it is not neceſſary to inquire into colluſion, inaſmuch as both the ſeiſin and diſſeiſin are found by the verdict; and how they came into the tenancy appears by the record; and it was by ſufficient licence. And ſo it ſeems to me that they ſhall recover. YONG: It may be that he and his fellows have made alienation for that period, or that they were deveſted of the tenements by ſome other legal mode. And inaſmuch as this can be ſurmiſed, it is fitting to inquire into the colluſion, &c. **Forteſcue:** This ſhall not be ſurmiſed as you ſay unleſs it be ſhown. And therefore you, plaintiff, ſhall recover your ſeiſin and your damages, &c. (See the like matter in a writ of "Right." Trinity Term, 5 Edw. III.)

A Bill of Treſpaſs was brought in the King's Bench by David Selby, againſt one in the ward of the Marſhal. And they pleaded to the iſſue; which was found for the plaintiff. POLE prayed judgment for the plaintiff. [After MOYLE, YONGE, YELVERTON, and YONGE,] **Forteſcue:** As it ſeems to me, it is enough: for although the cauſe of his being in priſon does not appear, it ſhall be ſuppoſed for a legal reaſon; for it may be for ſome offence done to the Court, or ſome other ſuggeſtion made to us; of which things we never ſhould make record. And many people are often in this place committed to priſon; which proceeding ſhall be ſuppoſed legal rather than otherwiſe. And therefore recover your damages, &c.

Note, when one was arraigned on an indictment of Robbery, and the inqueſt was taken f. 11.

pur eſtre jure ſur lenditement. WILBY : Le party que ſuit robbe ad un Appel de ceo vers celuy qui eſt delivere a le Vicont, come appert icy devant vous de recorde, et pria que l'Enqueſt demurre jeſque que il ſoit arreine a la ſuit le party, a que le Ley dona le ſuit; car auterment par tiel voye le party poit eſtre defraude de ſon ſuite. **Forteſcue :** Ceo ſeroit enconter reaſon a diſcharger ceſt enqueſt : car ſi le party ne voile apres ſuir come avant ſon Appel, donque le Roy covient commencer novel proces vers les Jurors, qui ſeroit enconter reaſon ; et noſmement quand il n'appert a la Court que eſt de meſme le felony : et defaut eſt en voſtre client que il ne voile aver garde ſon temps quand il fuit arraine ſur l'enditement, ou ore a ce jour uſt mis eins ſur luy un bill de meſme le Robbery, ou pris ſon Appel pluſtoſt ; iſſint que le Court purra aver aſſerte per ſon declaration que il fuit de meſme le Felony ; et iſſint n'ad il fait. Et ſi ne prendrons l'Enqueſt, il ſeroit detenu en priſon par plus long temps ; le quel eſt en conter reaſon : car il poit or paraventure eſtre acquite et delivere. Et pur ceo veigne l'Enqueſt, &c. Mes auterment eſt d'un Appelle de mort de home, pur ceo que il appert en le brief que il eſt de meſre le felony, &c.

Brief de Treſpas fuit porte par un perſon vers un, de ſes blees en garbes en certeine lieu priſes et emportes. Le defendant juſtifia come ſervant a un autre parſon come diſmes deins ſon paroiſſe ſeveres de ix partes, et dona colour a le plaintif. Et le plaintif monſtra coment il fuit perſon d'un Egliſe adjoinant a l'autre paroiſſe, et coment il avoit un porcion les diſmes en cele lieu, et il fuit poſſeſſe de eux, et fiſt ſufficient title come parſon, &c. Et entant que l'auter avoit conu le tranſgreſſion, il pria ſes damages, &c. HINGESTON : Or de ſa conus ans demeſne nous prions que le Court ſoit ouſte de Juriſdiction. LAICON : Et nous prions nos damages pur defaut de reſponſe : car nous ne purrons ſuir envers le ſervant en Court Chriſtein, pur ceo que il eſt lay perſon, nient plus que envers un fermour d'un Egliſe, et pur ceo le Court avera Juriſdiction. **Forteſcue :** Or appert a la Court, que le droit des diſmes ſont en debat, et tout ceo que le ſervant fiſt fuit en le droit de ſon Maiſtre, et ſi l'iſſue ſeroit pris icy en ceſt Court, le ſervant auroit ayde de ſon Maiſtre. Et perſons ne purront colier lour diſmes eux meſmes ; iſſint covient de neceſſity aver ſervants : iſſint appert que tout que le ſervant fiſt fuit en ſon droit ſcavoir le Maiſtre ; et iſſint le droit des diſmes ſeroit determine icy en ceſt Court ſi nous procedromus que merement attient a la Court Chriſtien. Et pur ceo, de voſtre monſtrans demeſnes, ſues en Court Chriſtien par agard de ceſt Court, &c.

En un "Appelle de mort" dun home le defendant fuit appelle "J. S. nuper de Cheſter Yoman," et l'appel fuit porte en le County de Lincoln. Et un "capias' fuit agarde autrefois a la County Palais de Cheſter accordant a le Statut ceſt Roy anno 6, contenant le ſpace de vj ſemains, et nul "capias" eſt ore retourne, ne nul choſe par le Chancellier certifie de County Palais. Purque LAICON pria un "Exigent" a le Viconte de Lincolne : car ceux

to the bar to be ſworn on the indictment. WILBY: The party who was robbed has an Appeal thereof againſt him who was delivered to the ſheriff, as appears of record here before you; and he prayed that the inqueſt might remain until he was arraigned at the ſuit of the party to whom the law allowed the ſuit; for otherwiſe in ſuch way the party might be defrauded of his ſuit. **Forteſcue**: It would be contrary to reaſon to diſcharge this inqueſt: for if the party be not afterwards willing to proſecute his Appeal, then the king will have to begin a new proceſs againſt the jurors, which would be againſt reaſon; and eſpecially ſince it does not appear to the Court that it is for the ſame felony; and your client is in default in not keeping to his time when he was arraigned on the indictment, or in not at this day bringing againſt him a bill for the ſame robbery, or commencing his appeal ſooner, ſo that the Court could have been certified by his declaration that it was for the ſame felony; but this he has not done. And if we were not to take the inqueſt, he would be detained in priſon a longer time; which would be unreaſonable, for he may now perhaps be acquitted and delivered. And therefore let the inqueſt come, &c. But it is otherwiſe in the caſe of an Appeal of the death of a man, becauſe it appears in the writ that it is for the ſame felony, &c.

A writ of "Treſpaſs" was brought by a parſon againſt one, for his corn in garbs in a certain place taken and carried away. The defendant juſtified as ſervant of another parſon, as being tithes within his pariſh ſevered from the nine [other] parts, and gave colour to the plaintiff. And the plaintiff ſhowed how he was parſon of a church adjoining to the other pariſh, and how he had a portion of the tithes in that place, and was poſſeſſed of them, and made ſufficient title as parſon, &c. And inaſmuch as the other had admitted the treſpaſs, he prayed his damages, &c. HINGESTON: Now on his own admiſſion we pray that the Court be ouſted of juriſdiction. LAICON: And we pray our damages, for default of anſwer; for we cannot ſue againſt the ſervant in Court Chriſtian, becauſe he is a layman, any more than againſt the farmer of a church; and therefore the Court ſhall have juriſdiction. **Forteſcue**: Now it appears to the Court that the right of the tithes is in diſpute, and all that the ſervant did was in the right of his maſter; and if an iſſue ſhould be taken here in this Court, the ſervant would have aid of his maſter. And parſons cannot collect their tithes themſelves; ſo it is neceſſary for them to have ſervants; thus it appears that all that the ſervant did was in his right, that is, the maſter's; and ſo, if we were to proceed, the right to the tithes, which is a matter appertaining purely to the Court Chriſtian, would be decided in this Court. And, therefore, on your own ſhowing, ſue in Court Chriſtian by award of this Court, &c.

In an "Appeal of death," a queſtion was put; the defendant was appealed as J. S., late of Cheſter, yeoman;" and the appeal was brought in the county of Lincoln. And a "Capias" was heretofore awarded to the County Palatine of Cheſter, according to the ſtatute of the ſixth year of the preſent king, having the ſpace of ſix weeks; and no "Capias" is now returned, and nothing is certified by the Chancellor of the County Palatine. Where-

f. 11 b. de la County Palais ne voile jammes executer le brief. Et ceſt court ne poit eux punir meſque ils ne voilent rien faire. Et le Statut eſt, que les briefs ſeront directes le Viconte des Counties dont ils ſont nomes. Et de Cheſtre eſt nul Viconte; iſſint hors de cas le Statut. Et pur ceo moy ſemble que vous purres agarder un "Exigent" aſſes bien, &c. **Fortescue:** Vous dites veritie, le Statut eſt come vous dites, mes nientobſtant le proces ad eſte agarde pluſors fois illonques cy devant; et iſſint il covient icy, car il eſt en egal miſchief purque le Statut fuit fait; et pur ceo vous covient de ſuer illonques. Purque ſues, &c. en le Countie ou l'Appel eſt porte, &c.

Brief d'Error. Fuit aſſigne pur error, entant come en un action ſur le Statut de R. le 2 de "Forcible entre" fuit ſuppoſe par le ſuit que ne liſt a nulluy dentrer en aſcune terre ou tenements, ſinon ou l'entre eſt done par le Ley, et ceo nemy oveſque forte main, &c., et fuit ſurmis par le brief que le defendant avoit entre, ou l'entre ne fuit done par le Ley, en certein terre enconter le forme de le Statut: a que le defendant dit, que il n'entra pas en les terres enconter le forme de le Statut come il ad ſuppoſe: preſt. Et ceo fuit trove pur le plaintif: et que cele travers ne fuit pas bon fuit aſſigne pur error, &c. Laicon: Moy ſemble que il eſt error: car ceſt ple eſt *negativa prægnans;* car il implie que il entra et ceo loyalment, et
f. 12. auxi que il n'entra, &c. &c. [Yelverton and others follow.] **Fortescue:** Semble e travers bon: car il eſt plus natural travers que poit etre, a traverſer ce que eſt ſuppoſe par le brief: car en un "Formedon en le deſcender" il eſt bon travers, a dire que il ne dona pas a luy et a ſes heires de ſon corps engendres come il ad declare ou ſuppoſe par ſon brief. Et a ceo que ad eſte dit, que les Jurors ne devoient aver regard, et ajuger ceo que le Ley veut, et pondre ceo en lour verdit; jeo die que oil: car ſi recoverai envers vous certeine terre, et jeo entre, et vous portes Aſſiſe, et jeo plede a l'Aſſiſe, les Jurors ne doivent trouver ce e recoverie en lour verdit; mes uncore ils auront regard a cele recovery en lour verdit, que ceo ponde en le Ley, et iſſint covient a eux de trover nul tort, &c.; iſſint le travers bon, &c. **Fortescue:** Moy ſemble que le travers n'eſt bon: car en le cas que ad eſte mis de "Entre *ſine aſſenſu Capituli*" le travers n'eſt bon, donque le rejoindre del ple ne poit faire cele travers bon. Et il eſt diverſitie ou le matter d'un ple eſt bon, ou nient: car ou le matter n'eſt pas bon, le travers ne poit eſtre bon. Et en ceo cas a ma conceit, adire que il n'entra pas, ſon entre n'eſt pas done encontre le Statut n'eſt pas travers: car home ne poit traverſer ceo que append a la court, que poit eſtre matter en Ley en ſoy meſme: iſſint ceſt travers eſt cy countre, et poit eſtre entendu que ceo ne poit encluder en ſoy matter en Ley, et pur ceo il covient de monſtrer le forme de ſon entre s'il entrude, ou autrement de traverſer l'entre generalment, ſcavoir que il n'entra pas, &c.

fore LAICON prayed an "Exigent" to the Sheriff of Lincoln: for thoſe of the County Palatine will never execute the writ; and this Court cannot puniſh them, although they refuſe to do anything. And the ſtatute is that the writs ſhall be directed to the ſheriffs of the counties whereof they be named. And of Cheſter there is no ſheriff; ſo it is out of the meaning of the ſtatute. And therefore it ſeems to me that you can award an "Exigent" rightly, &c. **Forteſcue:** You ſay truly; the ſtatute is as you ſay; but, notwithſtanding, the proceſs has been awarded there many times before this; and ſo it is right in this caſe, for the miſchief is correſponding to that for which the ſtatute was made: and therefore you muſt ſue there. Wherefore ſue &c., in the county where the appeal is brought, &c. f. 11 b.

A writ of "Error." It was aſſigned for error that in an action on the ſtatute of Richard II. of "Forcible Entry," it was ſuppoſed by the ſuit that it is lawful for no one to enter on any land or tenements, except where the entry is given by the law, and this not with main force, &c. And it was ſurmiſed by the writ that the defendant had entered, where entry was not given by the law, on certain land, contrary to the form of the ſtatute; to which the defendant ſaid, that he did not enter on the land contrary to the form of the ſtatute, as he (the plaintiff) had ſuppoſed; ready. And this was found for the plaintiff. And that this traverſe was not good, was aſſigned for error, &c. LAICON: It ſeems to me that it is an error; for this plea is a negative pregnant, for it implied that he did enter, and that legally; and alſo that he did not enter &c. &c. [YELVERTON and others follow.] **Forteſcue:** The traverſe ſeems good; for it is the moſt natural traverſe that can be, to traverſe what is ſuppoſed by the writ: for in a "Formedon in the deſcender" it is a good traverſe to ſay that he did not give to him and to his heirs of his body begotten, as he has declared or ſuppoſed by his writ. And to what has been ſaid, viz. that the jurors ought not to have regard and adjudge what the law wills, and to ponder it in their verdict, I ſay they ought; for if I recover againſt you certain land, and I enter, and you bring an Aſſize, and I plead to the Aſſize, the jurors ought not to find that recovery in their verdict; but ſtill they ſhall have regard to this recovery in their verdict, becauſe it weighs in the law; and ſo it is right for them to find that there was no tort, &c.; ſo the traverſe is good, &c. **Forteſcue:** It ſeems to me that the traverſe is not good: for in the caſe which has been ſuppoſed of an "entry without aſſent of the Chapter," the traverſe is not good; therefore rejoinder on the plea cannot make this traverſe good. And there is a difference where the matter of a plea is good, and where it is not; for where the matter is not good, the traverſe cannot be good. And in this caſe, in my opinion, to ſay that he did not enter (where his entry is not given to him) contrary to the ſtatute, is not a traverſe; for one cannot traverſe what belongs to the Court [to decide] which may be matter of law in itſelf: ſo this traverſe is counter to this, and it may be underſtood that this may include within itſelf matter in law, and therefore it is neceſſary to ſhow the form of his entry, if he intrudes; or otherwiſe to traverſe the entry generally, viz. that "he did not enter," &c. 5 R. II. c. 8. f. 12

f. 12 b. En un "attaint" porte vers un, qui recovera par Aſſiſe, le plaintif en Aſſiſe ore pleda non-tenure: et nient tenu pur ple en ſon bouche. Puis il monſtre coment l'Aſſiſe fuit "de libero tenemento ſuo in Dale, Vale, et Sale," et l'"Attaint" eſt *parati ſieramenti recognoſcere* ſi A. que ſue l'Attaint diſſeiſit le plaintif de l'Aſſiſe de le manor de Dale, et x acres de terre, x acres de pre, et de xx acres de bois ove les appurtenances en ſes dits villes." Chock: Jugement de brief: car le brief ſera general come l'Aſſiſe eſt ſi A. diſſeiſit le plaintif en Aſſiſe *de libero tenemento ſuo*, &c. et nient *de manerio, terra, prato, et bois* en ſpecial come le pleint eſt: car nul tiel aſſiſe eſt: et auxy le tenant ad reſpondu come tenant de la parcele des terres en un ville, et parcele en auter, et par ceſt "Attaint" tout ſera entendu en cheſcun ville. Purque, &c. **Fortescue:** Quant al premier point, le forme de le brief general et ſpecial ſont aſſes bons ambideux: et a ceo que dites que tout ſera entendu entier en cheſcun ville; il n'eſt pas iſſint: car il ſera entendu que parcele des terres, ou de le manoir en cheſcun ville; et poit eſtre. Et pur ceo reſpondes, &c.

De Termino Paſchæ, A°. xxxi. Hen. VI.

f. 13. Un "Habeas corpora" vers les Jurors fuit retorne ſervie per le Viconte, et parcele per un Bailie dun Franchiſe. Et ceo fuit ajuge mal retourne, et le Viconte amerci: car ceo fuit entier Jurie. Car fuit dit per **Fortescue**, que poit eſtre que les Jurors demeurent dehors le Franchiſe, et iſſint le baily ne poit eux garner pur ceo que ils ſont dehors, et ils ſont ſufficient; et auxi poit eſtre que ils ont terres deins, et demurgent dehors, &c. Ashton: Si un diſtres ſoit agarde a le Viconte ſur un Brief de "Droit de garde" ove proclamacion, et quant al diſtres le Viconte retorne *Mandavi Balivo talis libertatis, qui mihi ſic reſpondit. Exitus, &c. extra quam*, &c. Iſſint poit eſtre icy que aſcun des Jurors ſont deins le Franchiſe, et n'ont rien dehors; en quel cas come me ſemble le Viconte poit ſervir le brief quant a ceux que ſont dehors, et le baily de eux qui ſont de deins, &c. **Fortescue:** Jeo denie voſtre cas: car envers un perſon un officer ſervira tout le brief: et pur ceo il fera le proclamation, et auxi ſervira le "Diſtringas" mes ſi ils furent pluſors defendants en un "Capias," ou "Diſtringas:" quant a un il bien dira *mandavi Ballivo qui*, &c. et envers un auter il ſervira le brief luy meſme, &c. Mes auter eſt de diſtres envers Jurors: car ſi un Juror demeurt deins le Franchiſe, et ad terre dehors, et rien dedeins; ou demeurt dehors, et ad dedeins, et riens dehors, il ſera ſervi par le Viconte et nemy parcele par le baily, mes entiere par le Viconte, ou par le baily: et iſſint en ceſt cas. Purque, &c.

De Termino Paſchæ, A°. xxxi. Hen. VI.

f. 13 b. En un "Indicavit" auterfois fue per W. Boteraux, Chivaler, direct a's Officiers et

In an "Attaint" brought againſt one who recovered by Aſſize, the plaintiff in the Aſſize pleaded non tenure: and it was held not to be a good plea in his mouth. Then he ſhowed how the Aſſize was "of his frank tenement in Dale, Vale and Sale," and the "Attaint" is "ready on their oath to recognize if A., who ſues the attaint, diſſeiſed the plaintiff in the Aſſize of the manor of Dale, and ten acres of land, ten acres of meadow, and twenty acres of wood, with the appurtenances in the ſaid towns." CHOCK: Judgment of the writ; for the writ ſhall be general where the Aſſize is, "if A. diſſeiſed the plaintiff in the Aſſize of his tenement, &c." and not of the "manor, land, meadow, and wood," ſpecially, as the plaint is: for there was no ſuch Aſſize; and alſo the tenant has anſwered as tenant of parcel of the lands in one town, and of parcel in another; and by this "Attaint" all ſhall be underſtood as being in each town. Wherefore, &c. **Forteſcue:** As to the firſt point, the forms of the writ, both general and ſpecial, are both good: and as to what you ſay that all will be underſtood to be entirely in each town, it is not ſo; for it ſhall be underſtood that parcel of the lands, or of the manor, are in each town; and it may be ſo. And therefore anſwer, &c. f. 12 b.

Eaſter Term, 31 HEN. VI.

A "Habeas Corpora" againſt the jurors was returned as ſerved by the ſheriff, and partly by a bailiff of a liberty. And this was adjudged a bad return, and the ſheriff was amerced, for this was an entire jury. For it was ſaid by **Forteſcue** that perhaps the jurors live outſide the liberty, and ſo the bailiff cannot warn them, becauſe they are outſide, and they have ſufficient; and alſo perhaps they have lands within, and live without, &c. ASHTON: If a diſtreſs be awarded to the ſheriff on a writ of "Right of ward" with proclamation, and as to the diſtreſs the ſheriff returns "I have ordered the bailiff of ſuch liberty, who hath anſwered to me thus—The iſſues &c., beyond which, &c."; ſo here perhaps ſome of the jurors are within the liberty, and have nothing outſide; in ſuch caſe it ſeems to me that the ſheriff ſhall ſerve the writ as to thoſe who are outſide, and the bailiff as to thoſe who are within. **Forteſcue:** I deny your caſe; for againſt one perſon one officer ſhall ſerve the whole writ: and therefore he ſhall make proclamation; and alſo ſhall ſerve the "Diſtreſs." But if there were many defendants in a "Capias" or "Diſtringas," as to one he ſhall well ſay, "I have ordered the bailiff, &c." and againſt another he ſhall ſerve the writ himſelf, &c. But it is different in a diſtreſs againſt jurors; for if a juror lives in the liberty, and has land outſide and nothing within; or lives outſide, and has [land] within, and nothing outſide, he ſhall be ſerved by the ſheriff, and not partly by the bailiff; but entirely by the ſheriff, or by the bailiff: and ſo in this caſe. Wherefore, &c. f. 13.

Eaſter Term, 31 HEN. VI.

In an "Indicavit" formerly ſued by W. Boteraux, knight, directed to the officers and f. 13 b.

Commiſſioners l'Eveſque d'Exceſtre eux prohibite de tenir un ple que fuit devant eux par entre un Benet, *rectorem et Scios Capelle B. Marie de Salpton in Com. Devon, proprietarios Capellæ parochiæ de Poundſtoke in Com. Cornubiæ*, plaintif et T. H. Parſon de Egliſe de Minſter, auterment appelle Calcarne deins meſme le County, de quel Egliſe le dit Boteraux fuit Patron; de ceo que le dit T. le dit rectorie et Societe deforce d'aver le moite des groſſes Diſmes et meindrez diſmes de le manor de Wolbeſton deins le dit paroiſſe de P. qui amonte al valu de viij marks par an.; par force de quel ils furceſſerent. Sur que vient ore (pur le dit rector et ſes Compagnons), HINGESTON, et monſtra ceſt matter a la Court, et dit que per le Statut *de Regia prohibitione*, et *conjunctim feoffatis* (*in fine*), il eſt ordeine, que nul "Prohibition" de prohibiter le Court Chreſtien a tenir ple des Diſmes ne ſera grant devant que *lis ſit conteſtata in Curia Chriſtianitatis* des diſmes, et ceo a le "Capitali Juſticiario," ſcavoir a le Chancelor ſoit certifie per inſpection d'un libe de meſme le ple a luy monſtre et certifie: et Sir, nul tiel matter fuit fait; purque cele "Indicavit" fuit malement grante. Purque nous prions un "Conſultation." **Fortescue:** Si il fuit come vous dites, il fuit malement fait; mes uncore vous n'aures un general brief, mes ſpecial reherſant le matter coment il fuit malement grante; pur cele cauſe dit que nonobſtant que ils alerent avant tanque il avoit auterment en commandement de le Roy, et ceſt ſera
f. 14. a tiel entent que ils purront apres aver un libel, et monſtrer a le Chancelor color pur aver un novel Prohibition. Et al darrein fuit monſtre a la court coment un libel fuit monſtre a le Chancelor, et ceo recorda un Maiſtre de la Chancery, que fuit Docteur de la Ley, per le quel fuit prove "litem eſſe conteſtatam." **Fortescue:** Que appelles vous "lis conteſtata?" NEWTON (Docteur): "Lis conteſtata" eſt quand le libel eſt mis eins en le Court, et le defendant eſt mis a reſpondre a ceo, et il ad done reſpons, ſur que appert que le droit des diſmes ſeroit determine. **Fortescue:** Vous dites bien; fuit iſſint en cele libel? WHETTON: Oil, Sire. **Fortescue:** Paſſes ouſtre. HINGESTON: Sire donques nous diomus que le dit Rector &c. eſt Parſon del Egliſe de P. emparſonée; et diomus auxy que meſme le Parſonage et le Vicarage de meſme l'Egliſe de P. valent *per annum* xl livres, et le ple come appert per le libel n'eſt que des diſmes a la valu des viij marks: iſſint de la meindr valu de iv part; le quel matter, &c. Et priomus un "Conſultation." **Fortescue:** Ore il eſt a voir s'il ſera pris a la valu de le Parſonage par ſoy meſme, ou de le Parſonage et Vicarage enſemblement, &c. HINGESTON: Il aura relation a ambideux; car ils deux ſont forſque un Eſgliſe, et ceſtuy que eſt Patron de le Patronage, eſt Parſon et Patron de le Vicarage auxy: iſſint in effect forſque un en ſoy et pur ceo il aura relation a ambideux. YELVERTON: Iſſint me ſemble que ſi le Vicar ſoit emplede d'aſcun choſe que appertient a ſa Vicarage, il aura aide de le Parſon; iſſint que ſi le Vicarage ſoit deminiſhe, il aura plus de le Parſonage, ſi le remenant ne ſoit ſufficient: et iſſint eſt ſi le Parſonage ſoit empoviſhe, et

commiſſioners of the Biſhop of Exeter, they were prohibited from holding a plea that was before them between one Benet, rector, and the fellows of the Chapel of the Virgin Mary in Salpton, co. Devon, proprietors of the chapel of the pariſh of Poundſtoke, in the county of Cornwall, plaintiffs, and T. H. parſon of the Church of Minſter, otherwiſe called Calcarne, in the ſame county, defendant, of which church the ſaid Boteraux was patron; in that he, the ſaid T., deforces the ſaid rector and fellows from having the moiety of the greater and leſſer tithes of the manor of Wolbeſton, in the ſaid pariſh of P., which amount to the value of viij marcs by the year; by force of which they ſurceaſed. Whereupon now, for the ſaid rector and his companions, comes HINGESTON, and ſhowed this matter to the Court, and ſays that by the Statute of "Royal prohibition," and of "joint feoffees" (near the end), it is ordained that no "Prohibition" to prohibit the Court Chriſtian from holding a plea of the tithes ſhall be granted before the cauſe be conteſted in Court Chriſtian as to the tithes; and this to be certified to the Chief Juſtice, that is the Chancellor, by inſpection of a libel of the ſame plea to him ſhown and certified. And, Sir, no ſuch thing was done; therefore this "Indicavit" was granted wrongfully. Wherefore we pray a "Conſultation." **Forteſcue:** If it was as you ſay, it was wrongfully done; but ſtill you ſhall not have a general writ, but a ſpecial one, rehearſing the matter and how it was wrongfully granted. For this cauſe it ſaid that, notwithſtanding, they ſhould proceed until they ſhould be otherwiſe ordered by the King; yet it ſhall be to ſuch intent that they might afterwards have a libel, and ſhow it f. 14. to the Chancellor for the purpoſe of having a new Prohibition. And at laſt it was ſhown to the Court how a libel was ſhown to the Chancellor; and this a Maſter of Chancery recorded, who was doctor of law, whereby it was proved to be "lis conteſtata." **Forteſcue:** What do you call a "lis conteſtata?" NEWTON (Doctor): "Lis conteſtata" is when a libel is brought into Court, and the defendant is put to anſwer thereto, and he has given anſwer; whereon it appears that the right of the tithes is to be determined. **Forteſcue:** You ſay well; was it ſo in this libel? WHETTON: Yes, Sir. **Forteſcue:** Paſs on. HINGESTON: Sir, then we ſay that the ſaid rector, &c. is parſon imparſonce of the church of P.; and we alſo ſay that the ſame parſonage and the vicarage of the ſame church of P. are worth yearly xl. pounds; and the plea, as appears by the libel, is only of the tithes to the value of viij. marcs; and ſo is of leſs value than one-fourth; which matter, &c. And we pray a "Conſultation." **Forteſcue:** Now we muſt ſee if it ſhall be taken with relation to the value of the parſonage by itſelf, or to the parſonage and vicarage together, &c. HINGESTON: It will have relation to both; for they two are only one church, and he who is patron of the parſonage is parſon, and patron of the vicarage alſo; ſo in effect it is only one thing in itſelf, and therefore it ſhall refer to both. YELVERTON: So it ſeems to me; for if the vicar be impleaded of anything which pertains to his vicarage, he ſhall have aid of the parſon; ſo that if the vicarage be diminiſhed, he ſhall have more from the parſonage, if what remains be not ſufficient; and ſo it is if the parſonage be impoveriſhed, and ſo decayed, that neither the

tant decays que le Parſonage per ſoy, ne le Vicarage ſont ſufficients de eux ſuſtener; donques le Vicarage ſera determine et reſtitute a le Parſonage: et a ceo accordent les Docteurs. Et ſi un charge fuit ſurdie ſur le Vicarage, il ſera recompence de le perſonage; et ceo prove bien n'eſt en effect forſque un Egliſe; et pur ceo aura relation a la valu d'ambideux. **Fortescue:** Moy ſemble le contrary: car nient obſtant que poit eſtre par ſodeine aventure que le Vicarage ou Parſonage poit eſtre en tant decaye, que tout le Vicarage ſera rejoint a le Parſonage, uncore ceo ne prove mes qu'ils ſont ore perpetuel cheſcun aperluy. Car avowſon de Vicarage poit eſtre grante a autre par le Rector ou per ſes Compagnons, et l'avowſon de le Parſonage demurre en eux, et brief de "Droit d'avowſon" de Parſonage purroit eſtre porte a par luy, et autre de le Vicarage a par luy; et iſſint il n'aura relation forſque a la valu de le Parſonage *tantum:* et iſſint ſont ils ſeveral avowſons. Et Sire, a ma conceit le Statut de Weſtm. ij *cum per breve Indicavit impediatur Rector alicujus Eccleſiæ*, &c. fuit ordeine pur ceo que quand aſcun ple uſt eſte en Court Chreſtien des diſmes, ils en ceſt Place voillent granter un "Indicavit," par quel ils uſſent furceſſe en Court Chreſtien, en le quel il fuit a la valu de la iv part, ou de meindre; et nul "Conſultation" ceſt Court voile granter, ne aſcun brief de "Droit" de diſmes Patrono Rectoris ſic impediti, ne metter en certein le quel valu, pur [ceo] il ſera entendu de cheſcune valu; iſſint a ma conceit le valu ne fait rien en ceſt cas. Hingeston: Jeo entends que le brief de Droit des Diſmes fuit a la Commen
f. 14 b. Ley. **Fortescue:** Monſtres ceo, et donques jeo vous croyeray. Hingeston: Sir, le
13 Ed. I. St. 4. Statut "de Regia prohibitione" eſt, "*ubi Rector agat coram Rectore de decimis majoribus vel minoribus dummodo non petatur quarta pars alicujus Eccleſiæ non jacet prohibitio:*" et iſſint ſont nos livres, &c. **Fortescue:** Nous voillomus eſtre avis; gardes voſtre jour tanque al' prochein Terme. Et le brief de "Indicavit" fuit de ceſt forme, &c.

f. 15. En brief ſur le ſtatut de "forcible entre" porte vers deux; Littleton monſtra coment autrefois apres le declaration et emparlance l'un avoit fait defaut; et ceo recorde; l'autre avoit plede de rien culpable. Et un "Niſi prius" fuit grante ſur ceo, que remaine a le jour de "Niſi prius" pur defaut des Jurors. Et Sire, nous diomus que ceſty qui pleda eſt mort puis le jour de "Niſi prius." Et prioms brief al Viconte vers lautre qui ad fait defaut, pur enquerer des damages. Et l'attorne ceſty qui mort fuit allegea que il fuit en vie. **Fortescue:** Ceo ne poit faire iſſue: car s'il auroit le ple, ceo ſeroit pur miſchief de ſon Maiſtre, et il eſt pluſtoſt availe a luy que autrement: et ſi l'iſſue ſeroit priſe, et fuit trie enconter l'attourney, que aviendra de ceo? Riens, &c. Et Sire, le jour que ſeroit done ſur ceſt ple ſeroit done a l'attorne, et nient a ſon Maiſtre, iſſint le ple ſeroit diſcontinue: car le Maiſtre n'averoit jour; car le jour ne ſeroit done a un tiel par attorne. Et de l'autre part, s'il ſoit en vie le ple poit eſtre diſtcontinue per tiel maner, de que l'autre aura brief d'Error

parſonage by itſelf, nor the vicarage, is ſufficient to ſupport them; then the vicarage ſhall determine and be reſtored to the parſonage. And to this the doctors agreed. And if any charge be placed on the vicarage, it ſhall be recompenſed out of the parſonage; and this proves well that in effect it is only one church, and therefore it ſhall have relation to the value of both. **Fortescue:** I think the contrary; for notwithſtanding that it may happen that by a ſudden chance the vicarage or parſonage may be in ſuch decay, that all the vicarage will be rejoined to the parſonage; ſtill this only proves that they are now perpetual each by itſelf. For the advowſon of the vicarage can be granted to another by the rector or by his companions, and the advowſon of the parſonage may remain in them; and a writ of "Right of Advowſon" of the parſonage might be brought by itſelf, and another of the vicarage by itſelf; and ſo it will have relation to the value of the parſonage only; and ſo they are ſeveral advowſons. And Sir, in my opinion, the ſtatute of Weſtminſter 2 ("where by writ of Indicavit any rector of any church is prevented, &c.") was ordained becauſe when any plea of tithes, where the value was one-fourth or leſs, was in Court Chriſtian, thoſe in this "place" would grant an "Indicavit," whereby they would have ſurceaſed in Court Chriſtian; and this Court will grant no "conſultation" nor any writ of "Right of Tithes" to the patron of the rectory thus prevented, and will not ſet in it of what value; wherefore it ſhall be underſtood of each value; ſo in my opinion the value does not matter in this caſe. Hingeston: I underſtand that the writ of "Right of Tithes" was at common law. **Fortescue:** Show this, and then I will believe you. Hingeston: Sir, the ſtatute f. 14 b.
of "Royal Prohibition" is "when a rector demands tithes greater or ſmaller, ſo that a fourth part of the benefice be not demanded, no prohibition lies;" and to this effect are our books, &c. **Fortescue:** We will take counſel; keep your day until next term. And the writ of "Indicavit" was in this form, &c.

In a writ on the ſtatute of "forcible entry" brought againſt two, Littleton ſhowed how f. 15.
formerly, after the declaration and imparlance, one had made default, and it was recorded; the other had pleaded "not guilty." And a "niſi prius" was granted thereon, which remained on the day of "niſi prius" for default of the jurors. And Sir, we ſay that he who pleaded is dead ſince the day of "niſi prius." And we pray a writ to the ſheriff againſt the other, who made default, to inquire into the damages.—And the attorney of him who was dead alleged that he was alive. **Fortescue:** This cannot make an iſſue; for if he ſhould have the plea, that would be to his maſter's hurt; and it is more advantageous to him than otherwiſe. And if the iſſue ſhould be taken and tried againſt the attorney, what would come of it? Nothing, &c. And Sir, the day which would be given on this plea would be given to the attorney, and not to the maſter, and ſo the plea would be diſcontinued: for the maſter would not have a day; for the day would not be given to ſuch an one by attorney. And on the other ſide, if he be alive, the plea may be diſcontinued in ſuch manner, whereby

et par voie de reſponſe, s'il n'uſt fait defaut, &c. LITTLETON: Nous priomus brief d'en querir a noſtre peril, &c.

En un "Quare impedit" port vers trois: le plaintif declara vers deux, en rien fuit parle de le tiers, ne continuance fait vers luy, et les autres avoient plede et deſtruy le title le plaintif et fait eux bon title. Et ſur ceo prierent Jugement, et d'aver brief a l'Eveſque vers le plaintif. HINGESTON: ceo ne deves aver, car tout le ple eſt diſcontinue: car ſi home ad un accion de tranſgreſſion vers deux, ou aſcun autre accion, et il diſcontinue l'accion vers l'un, il eſt diſcontinue vers toutz, iſſint icy, et s'il fuit nonſui vers l'un, il eſt nonſui vers touts. Et pur ceo que le count eſt vicious, le brief abate: car le brief et count ne ſont forſque un original. Et s'il ſuit ſur brief de "Droit d'avowſon," et le Miſe fuit joint, et trove pur le tenant, ſi le count ſoit vicious, il n'aura Jugement final, mes le brief abatera. **Forteſcue:** Nient ſemble: car ſur ceſt accion ſi le plaintif ſoit nonſui, le defendant fera a luy title, et aura brief al Eveſque; et en meſme le maner quand le brief abatera pur un vice en le count: mes ſi le defendant uſt plede miſnomer de le plaintif ou de ſoy meſme, et le brief uſt abate, ou ſi le brief uſt eſte nient ſufficient en ſoy, le defendant n'aura brief a l'Eveſque. Mes en ceſt cas le brief eſt bon; et pur ceo il aura brief a l'Eveſque.—Et adjornatur, &c. (*Quære Legem.*)

Brief de "Conſpiracy" ſur enditement, "de ceo que le plaintif certein jour an et lieu ove force et Armes ſur un B. *inſultum fecit et ipſum verberavit vulneravit, &c., ad tunc et ibidem ivs. de denariis ipſius B. in burſa ſua inventos felonice furatus eſt.*" Et ceſt matter fuit reherſe en ſon brief, et en le concluſion de le brief, *et ea occaſione le querens captus, &c.,*
f. 25 b. *impriſonatus apud B., &c. et in priſona detentus quo uſque &c. inde acquietatus.* DANBY: Jugement de brief, car il ad compris deins ſon brief, et luy compleine par ſon brief de tiel choſe de quel brief de "conſpiracy" ne giſt, ſcavoir de batery, &c. Purque, &c. MOILE: Moy ſemble le contrary, Car tout ceo neſt que continuance de la matter; et quand tiels choſes ſont en un enditement, s'il ſoit acquite de la felony, il ſera acquit de l'aſſaut et batery; *quid magis dignum trahit ad ſe minus dignum.* PRISOT: En ceſt cas felony purra eſtre entendu robery, il eſt voier: mes ceo ne poit; car s'il fuit trove culpable forſque vjd. il ne ſeroit pendu: donques il appert bien que ceo ne fuit pas robery; car poit eſtre entendu que il fuit fait, et nient a ſa perſon, et donques vous aves meſpris votre action de compleine de treſpas, de quel nul action de "Conſpiracy" giſt. Purque, &c. **Forteſcue:** Moy ſemble le contrary: car ceſt treſpas de batery et felony ſera dit un felony: car come ad eſte dit, ceo que eſt de plus bas nature, come eſt de rent charge iſſant de terre a la Comon Ley et deins ancien demeſne, ſera terminable en ceſt Court: iſſint quand cele batery eſt le conveyance de

the other ſhall have a writ of "Error," and by way of anſwer, if he had not made default, &c. LITTLETON: We pray a writ of "Inquiry" at our peril, &c.

In a "Quare impedit" brought againſt three, the plaintiff declared againſt two, and nothing was ſaid of the third, nor was continuance made againſt him; and the others had pleaded, and deſtroyed the title of the plaintiff, and made to themſelves a good title. And thereon they prayed judgment, and to have a writ to the Biſhop againſt the plaintiff. HINGESTON: This you ought not to have; for all the plea is diſcontinued: for if a man has an action of treſpaſs, or any other action, againſt two, and diſcontinues the action againſt one, it is diſcontinued againſt all; ſo here; and if he ſhould be non-ſuited as to one, he will be non-ſuited as to all. And as the count is vicious, the writ will abate, for the writ and count are only one original. And if he ſue on a writ of "Right of Advowſon," and the miſe be joined, and be found for the tenant, if the count be vicious, he ſhall not have final judgment, but the writ will abate. **Forteſcue:** The caſes are not ſimilar; for on this action, if the plaintiff be non-ſuited, the defendant will make a title in himſelf, and ſhall have a writ to the Biſhop. And in the ſame way, when the writ ſhall abate by a fault in the count. But if the defendant had pleaded miſnomer of the plaintiff or of himſelf, and the writ had abated, or if the writ had been not ſufficient in itſelf, the defendant would not have a writ to the Biſhop. But in this caſe the writ is good; and therefore he ſhall have a writ to the Biſhop. And it was adjourned. (*Quære* the law, &c.)

A writ of "Conſpiracy" on an indictment, "for that the plaintiff on a certain day, year, and place, with force and arms, did on one B. make an aſſault and beat and wound the ſame, &c., and then and there did felonioufly ſteal ivs. of the money of the ſame B. found in his purſe." And this matter was rehearſed in his writ, and the concluſion of the writ ſtated, "and on that occaſion the complainant was taken, &c., impriſoned at B., &c., and detained in priſon until, &c., thereof acquitted." DANBY: Judgment of the writ; for f. 25 b.
he has compriſed in his writ and complains himſelf by his writ of a thing for which a writ of "Conſpiracy" lies not, viz., of battery, &c. Wherefore, &c. MOILE: The contrary appears to me; for all this is only continuance of the matter; and when ſuch things are in an indictment, if he be acquitted of the felony, he ſhall be acquitted of the aſſault and battery; becauſe "the worthier thing draws to itſelf the leſs worthy." PRISOT: In this caſe felony might be underſtood as robbery, it is true; but this cannot be; for if he was found guilty of only vj*d.* he would not be hanged; then it appears that this was not robbery, for it may be underſtood that it was done, and yet not to his perſon, and then you have mistaken your action in complaining of treſpaſs, for which no action of "conſpiracy" lies. Wherefore, &c. **Forteſcue:** The contrary appears to me: for this treſpaſs of battery and felony ſhall be called a felony: for, as has been ſaid, that which is of a lower nature, as a rent charge, iſſuing out of land at common law and within the ancient demeſne, ſhall be terminable in this court; ſo, ſince battery is the conveyance of the felony,

la felony, tout ſera dit un felony. Car le Juſtice de la Gaol delivere n'aura poier ſur un enditement de treſpas de luy arreiner de tout, pur ceo que ils ont Juriſdiction ſur luy per reaſon de la felony que eſt de plus haute nature que le treſpas. Et home aura un Aſſiſe d'un choſe que s'il ſoit joine ove autres, le quel il ne poit aver s'il fuit a per luy. Come ſi un ad un corody deins un Meaſon de Religion, ſcavoir, d'aver certeines meſſes de chair, pain, ſervois, fuel, chambre, et un eſtable pur ſes chevals, s'il ſoit diſſeiſi de la corody il avera Aſſiſe de tout ſemblement; uncore ſa chambre ou eſtable a par luy ne poit eſtre dit corody, ne poit paſſer par fait de grant ſans livery et ſeiſin de ceo: mes quand il eſt joine ove tieles choſes que font corody, il ſera dit de meſme le nature come le corody eſt, et par nome de corody il doit faire ſon pleint et grant de ceo: car meſme le nom eſt bon ſans livere de ſeiſin. Iſſint ceſt aſſaut et batery quand ils ſont joint enſemble come avant eſt dit, ſont un felony: car ſi un home vient a mon meaſon pur moy robber, et enfreint mon meaſon, et prend biens ou nemy, le robery et le enfreindre de meaſon ſont un felony; et s'il ſoit acquite de la felony, il eſt acquite de le treſpas, &c.

De Termino Michaelis, A°. xxxii. Hen. VI.

f. 10. En l'Eſchequer chambre le Cas fuit tiel. En aſſiſe fuit un Patent de Aſſociation fait a un W. Copley, et apres fuit un auter fait a N. Aſhton. Et le queſtion fuit, le quel un aſſociation poit eſtre apres un auter, ou nemy. Billing: Me ſemble que l'aſſociation fait a N. Aſhton eſt voide: car les parolx de le primer Patent ſont general; car les parolex ſont, *una cum hiis quos eis aſſociamus:* donque quand ceux parolx ſont executes, ils ne poyent ouſterment proceder. Come le Roy ſeiſi d'un garde grante a moy le garde durant le nonage le heir, durant cele temps j'ay cauſe de luy retenir: et jeo poſe que il ad heir deins age et moruſt; jeo n'auray my ceſt garde: car mon patent ne ſtreche mi a cele: mes ſi jeo de ceo voile aver avantage, covient a moy d'aver mon patent accordant, ceſt aſſavoir, *de hærede in hæredem*. Iſſint icy, quand le primer patent ad effect de ceo que eſt en luy compris, covient que il ad tiels parolx en luy que purront prover effect. Meſme la Ley eſt, ſi terre ſoit leſſe a moy pur terme des ans, rendant par an xs., et ſi aſcun jour de payment ſoit adrere adonqe jeo perdrai xxs. ſi le condicion ne va ouſter, ſi le rent ſoit adrere a un jour, jeo perdrai la peyne, et ſi ſoit aderere a un auter jour apres jeo ne perdrai plus: car les parolex en l'endenture ſont generals: mes ſi il avera celes parolx, *toties quoties* donq jeo perdrai la peine a cheſcun jour: iſſint a ma entent le ſecond patent eſt void, &c. Wangford: Moy ſemble le contrairie: car le Roy a ſon pleaſir poit faire ſes Juſtices ceux que il voile; et quand il ad fait un, il poit faire auter: donq quand les parolx ſont generals, et il face un tiel ſon Juſtice, et luy plait de faire un auter Juſtice apres, ceo eſt aſſes bon: iſſint a ma entent la ſeconde aſſociation eſt aſſes bon. Yelverton: Moy ſemble le contrairie: car les parolx en le primer Patent covient eſtre

it ſhall all be called a felony. For the Juſtices of gaol-delivery ſhall not have power on an indictment of treſpaſs to arraign him of all, becauſe they have juriſdiction over him by reaſon of the felony, which is of a higher nature than the treſpaſs. And one ſhall have an Aſſize of a thing if he join it with others, which he cannot have if it ſtood alone. As if one has a corrody in a religious houſe, namely, certain meſſes of fleſh, bread, ale, fuel, a chamber, and a ſtable for his horſes; if he be diſſeiſed of his corrody, he ſhall have an aſſize for all together; yet his chamber or ſtable by itſelf cannot be called a corrody, nor can it paſs by deed of grant without livery and ſeiſin thereof; but when it is joined with ſuch things as make a corrody, it ſhall be ſaid to be of the ſame nature as the corrody is, and by name of corrody he ought to make his plaint, and a grant thereof; for the ſame name is good without livery of ſeiſin. So this aſſault and battery, when joined together as is aforeſaid, are a felony; for if a man come to my houſe to rob me, and break into my houſe, and take goods or not, the robbery and houſebreaking are a felony; and if he be acquitted of the felony, he is acquitted of the treſpaſs, &c.

Michaelmas Term, 32 HEN. VI.

In the Exchequer Chamber the caſe was this. In an aſſize a Patent of Aſſociation was made to one W. Copley, and afterwards another was made to N. Aſhton; and the queſtion was, whether one aſſociation can be after another, or not. BILLING: It ſeems to me that the aſſociation made to N. Aſhton is void; for the words of the firſt patent are general; for the words are, "together with thoſe whom we aſſociate with them;" then, ſince thoſe words are executed, they cannot further proceed. As if the King, ſeiſed of a wardſhip, grants to me that wardſhip during the nonage of the heir, during that time I have the right to retain him; now ſuppoſe that he has an heir under age, and dies, I ſhall not have this wardſhip; for my patent does not ſtretch ſo far; but if I wiſh to take advantage thereof, I muſt have my patent made out accordingly; that is to ſay, "from heir to heir." So here, ſince the firſt patent has effect in reſpect of what is contained in it, it is neceſſary for it to have ſuch words in it which ſhall prove the effect. The ſame law holds, if land be leaſed to me for a term of years, yielding annually ten ſhillings, with a condition that if on any day of payment the rent be in arrear, then I ſhall forfeit twenty ſhillings; if the condition do not go further, then if the rent be in arrear for one day, I ſhall forfeit the penalty; and if it be in arrear another day afterwards, I ſhall not forfeit more; for the words in the indenture are general: but if it ſhall have the words *toties quoties* then I ſhall forfeit the penalty each day: ſo in my opinion the ſecond patent is void, &c. WANGFORD: The contrary appears to me; for the King at his pleaſure can make who he will to be his Juſtices; and when he has made one he can make another; then ſince the words are general, and he makes ſuch one his Juſtice, and it pleaſes him afterwards to make another Juſtice, that is quite good; ſo in my opinion the ſecond aſſociation is good. YELVERTON: I think otherwiſe, for the words in the firſt patent muſt be

garde, et ceo ne fait il; car les parolx de le primer patent ſont tiels, *una cum hiis quos eis aſſociamus:* donq quand le Roy fiſt ſon aſſociation a Copley, donq les paroles de le brief furent performes; Et Sire, *poſito* que ceſt aſſociacion ſoit aſſes ſufficient, uncore a ma entente le aſſociacion par la maner eſt voide: car ſi le ſeconde aſſociation eſtera, covient que ceo ſoit garrante de le primer patent, et par les parolx en ceo contenus; et ceo n'eſt pas: car donq covient que les parolex tiels ſoient: "et illos quos aſſociavimus;" ou et que ils que, &c., nous, &c., "hac vice:" mes nul tieles parolx ſont en cele contenus. Et Sire, quand les Juſtices ont admis W. Copley par vertu de ſon patent, donq fuit il Juſtice ove eux: donq quand le patent vient a eux pur admettre N. Aſhton, ceo fuit void: car ceo fuit directe forſque a les Juſtice par le primer patent. Donques jeo poſe que le Roy per ſon patent face iii. de mes Maiſters icy Juſtices, et puis il aſſociate a eux autre le iii. interleſſe, ceſt aſſociation eſt void: car covient que ce ſoit a eux iii. directe, &c. **Fortescue:** Vous dites veritie, et ſemble a moy a meſme l'entent: car cheſcun qui ſuit covient ſuir le nature de la Court, et
f. 10 b. nemy de l'action. Car les Juſtices d'Aſſiſe, ou Juſtices de Oier et Terminer, ou Juſtices En Eire ont auxy haut poier par lour commiſſion en lour Court, come ont les Juſtices de Comon Bank: donque ſi ſoit en Comon Bank que brief de "Dette" ou brief de "Treſpas" ſoit ſue; ſi le Viconte returne ſummons en brief de "Dette" en le Comon Bank, donque iſſera un "Pone:" et ſi ſoit en brief de "Treſpas" que le Viconte returne que il eſt attache, donq le la party poit eſtre eſſoine s'il voile: mes s'il ſoit devant Juſtices d'Oyer et Terminer en brief de "Treſpas," le primer proces ſera "Venire facias." Meſme le Ley eſt en Aſſiſe, et ceo varie parenter un general Aſſiſe et un ſpecial Aſſiſe: car in general Aſſiſe ſi l'array ſoit challenge, ceo ſera trie par les circumſtances: mes ſi l'array ſoit challenge en ſpecial Aſſiſe, ceo ſera trie per ceux qui ſont enpanels, et par nul auter. Et auxy en un general Aſſiſe ils adjournent l'Aſſiſe par proclaimation tanque a la prochein Aſſiſe: et ſi Aſſiſe ſoit purchaſe en le mene temps, il n'aura auter precept par cele mes ceo qui fuit adevant: mes en ſpecial Aſſiſe ſile face lour precept devant le jour de l'Aſſiſe, ceo eſt void, et donque le Roy de ſon Royaltie poit faire a moy droit: et quand il meſme ne poit eſtre la de faire a moy droit, covient a luy de trover aſcun qui poit ceo faire. Et c'eſt la cauſe purquoy les Juſtices en un general Aſſiſe covient eſtre la, pur ceo que ils ont lour gages de la Roy. Mes les Juſtices en ſpecial Aſſiſe ne ſont pas de tiel condicion: car coment que ils ſoient faits per Commiſſion de Roy, uncore ils ne ſont pas lies de eſtre la ſinon que la party eux gage. Donque jeo proverai un miſchief: car ſi le Roy en ceſt Aſſiſe aſſociate un que ne veut pas la venir ſinon que jeo a luy voile doner plus que jeo purrai, l'Aſſiſe ſera diſcontinue. Iſſint miſchief enſueroit ſur un auter miſchief que jeo ne unques aura le effect de ma ſuit; et iſſint pluſors miſchief de ceo enſueroit: iſſint a ma entent en un ſpecial Aſſiſe aſſociation giſt, et en un Aſſiſe general un aſſociation apres lautre (come ad eſte dit) ne giſt mi. Ardern: Jeo poſe que le Roy par ſes Letters patentes aſſociate un a vous, et votre Companion qui eſt Juſtice

held to; and this is not done; for the words of the firſt patent are, "together with thoſe whom we aſſociate with them;" then, when the King aſſociated Copley, the words of the writ were exhauſted. And Sir, granted that this aſſociation be ſufficient, ſtill in my opinion the aſſociation in this wiſe is void; for if the ſecond aſſociation ſhall ſtand, it muſt of neceſſity be warranted by the firſt patent, and by the words therein contained; and this is not ſo; for then the words muſt be, "and thoſe whom we have aſſociated, together with thoſe whom, &c., we, &c., for this time;" but no ſuch words are contained therein. And Sir, when the Juſtices admitted W. Copley, by virtue of his patent, then he was Juſtice with them; and when the patent came to them to admit N. Aſhton, it was void; for it was directed only to thoſe who were Juſtices by the firſt patent. Now, ſuppoſe that the King by his patent makes three of my maſters here Juſtices, and then aſſociates another with [two of] them, omitting the third; this aſſociation is void; for it muſt be directed to thoſe three, &c. **Forteſcue:** You ſay rightly; and I am of the ſame opinion; for everyone who ſues muſt follow the nature of the Court, and not of the action. For the Juſtices of Aſſize, or Juſtices of Oyer and Terminer, or Juſtices in Eyre, have as high power by their f. 10 b
commiſſion in their Court as have the Juſtices of the Common Bench; then, if in the Common Bench a writ of "Debt" or writ of "Treſpaſs" be ſued, if the ſheriff return a ſummons in the writ of "Debt" in the Common Bench, a "Pone" ſhall iſſue; and if in the writ of "Treſpaſs" the ſheriff returns that he is attached, then the party can be eſſoined if he will; but if it be before the Juſtices of "Oyer and Terminer," the firſt proceſs in the writ of "Treſpaſs" ſhall be a "Venire facias." The ſame law holds in an aſſize; and there is this difference between a general aſſize and a ſpecial aſſize; for in a general aſſize, if the array be challenged, it ſhall be tried by the ſtanders by; but if the array be challenged in a ſpecial aſſize, it ſhall be tried by thoſe who are empanelled, and by none others. And alſo in a general aſſize they adjourn the aſſize by proclamation until the next aſſizes; and if an aſſize be obtained in the meantime, no other precept ſhall be had thereby, but what was before; but in a ſpecial aſſize, if they make their precept before the day of aſſize, it is void, and the King of his royalty can do me right; and when he himſelf cannot be there to do me right, he muſt find ſome one who can do ſo. And this is the reaſon why the Juſtices in a general aſſize muſt be there, becauſe they have their wages of the King. But the Juſtices in a ſpecial aſſize are not in a ſimilar condition; for although they are created by the King's commiſſion, ſtill they are not bound to be there unleſs the party pay them. Now, I ſhall prove the miſchief; for if the King in this aſſize ſhould aſſociate one who would not come there, unleſs I will give him more than lies in my power, the aſſize will be diſcontinued: ſo one miſchief would follow another; for I ſhould never get my ſuit to an end; and ſo many miſchiefs would thence enſue. So, in my opinion, in a ſpecial aſſize an aſſociation lies; and in a general aſſize one aſſociation after the other (as has been ſaid) does not lie. ARDERN: I put the caſe that the King by his letters patent aſſociates one with you, and with your

en Aſſize, et apres il face un auter, et *ſic de ſingulis*, devant ceo que aſcun de eux ſoit receu ; qui d'eux ſera receu ? **Fortescue:** Ceſty qui ad le premier Patent : mes ſi lour patents ſoient faits a un jour nous receverons qui nous plaira, &c.

De Termino Hillarii, Anno xxxij. Hen. VI.

f. 24. Nota que fuit tenu per **Fortescue**, et touts les Juſtices en l'Eſchequer Chamber, que ſi aſcun des defendants ſoit miſnome, tout le brief abatera ; ſi bien come ſi undes defendants moruſt pendant le brief, ou devant le brief. Et auxi fuit tenu que le demandant n'avera avantage par "Journees Accomptes" ou le brief fuit abatu par le defaut de le demandant come ou le demandant nome le defendant "Eſquier," ou il eſt "chivaller," &c. ou auterment, &c. : uncore ils tenent, que ſi le defendant plede jointenancy, et le demandant ceo confeſſe, que le demandant aura avantage par "Journees Accompts;" et uncore le purchaſe de le malves brief eſt l'act de le demandant : mes pur ceo que le demandant ne poit aver conuſance s'il tient ſolement, jointment, ou ſeveralment, come il poit aver conuſance de le nom ou ſurnom ceſty qui plede jointenancy, et prend les profits de quel il ad conuſance. Et auxi lou home plede jointenancy il affirme le tenancy en luy par le forme, &c.

f. 25 b. "Dette" fuit porte vers deux Executors en le County de Eborum. Les defendants diſoient que le teſtator fiſt eux deux et un John ſes executors, le quel John adminiſtra divers biens et chateux del' teſtator, ſcavoir a D. en l'Eveſchie de D., le quel John eſt en pleine vie nient nome en le brief. Jugement de brief. A que le plaintif dit que le dit John ne unques adminiſtra, &c. *Et alii e contra.* Et pur ceo que D. eſt en l'Eveſchie de Durham que eſt Countie paleis, et le brief le Roy ne court mi illonque ; en quel cas ſi aſcun fait ſoit plede et allege, illonque ſera trie ou le brief eſt porte per le Statut de Anno ix. E. iiij. cap. iv. (mes ſi cele cas fuit en le cas de le Statut, lez Juges voillent eſtre advis) ; purque a l'autre jour ceſt matter fuit move en l'Eſchequer Chambre per Priſot, coment eux ſemble ſera trie. Markham : Semble que ceo n'eſt ple : car ſi le defendant uſt plede tiel ple en Gales ou en Ireland, ceo n'uſt eſte ple, pur ceo que ne purra unque eſtre trie illonques. Et auxy le Statut ne redreſſe nul ple forſque releas ou auter fait que fuit allege en Countie paleis. Purque ſi aſcun auter matter, come mort ou adminiſtration, ou dures d'enpriſonment, ou aſcun tiel ple que ne fuit ple par fait duiſt eſtre plede, donque ſemble que ne uſt eſte nul ple a la comon Ley : car s'il uſt eſte ple, ceux en le Parliament que avoient redreſſe le dit forein ple per fait, voille aver redreſſe les auters ples, s'ilz furent ples, et s'ils feront ajuge ples, feront remedies per l'equite de meſme le Statut. **Fortescue:** Ou vous tenes que le ple n'eſt mi ple, jeo entende que eſt bon ple : car, en voſtre cas, ſi tiel forein ples ſoient alleges en Gales ou en Ireland, que ne ſont ples, jeo entende que ſont bons ples en meſme

companion who is Juſtice of aſſize, and that afterwards he makes another; and ſo of each one before either of them is received;—which of the two ſhall be received? **Forteſcue:** He who has the firſt patent; but if their patents be made on one day we ſhall receive whichever we pleaſe, &c.

Hilary Term, 32 Hen. VI.

Note that, it was held by **Forteſcue**, and all the Juſtices in the Exchequer Chamber, f. 24. that if any of the defendants be miſnamed, all the writ ſhall abate, as well as if one of the defendants die pending the writ, or were dead before the writ. And it was alſo held that the demandant ſhall not have advantage by "journeys accounts" where the writ of the demandant was abated by the default of the demandant; as where the demandant calls the defendant "Eſquire," where he is a knight, &c., or otherwiſe, &c. Still they held that if the defendant plead joint-tenancy, and the demandant confeſs it, the demandant ſhall have advantage by "journeys accounts;" and yet the purchaſe of the bad writ is the act of the demandant. But [the reaſon is] becauſe the demandant cannot know whether he (the tenant) holds ſolely, jointly, or ſeverally, as he can know the name or ſurname of him who pleads joint-tenancy, and takes the profits of what he has cognizance. Alſo where one pleads joint-tenancy, he affirms the tenancy to be in himſelf by the form, &c.

"Debt" was brought againſt two executors in the county of York. The defendants ſaid f. 25 b. that the teſtator made them two and one John his executors, which John adminiſtered divers goods and chattels of the teſtator, namely, at D., in the biſhopric of D., which John is in full life, and not named in the writ. Judgment of the writ. Whereto the plaintiff ſaid, that the ſaid John never adminiſtered, &c. And the others the contrary. And becauſe D. is in the biſhopric of Durham, which is a county palatine, and the King's writ does not run there; in ſuch caſe, if any deed be pleaded and alleged, there ſhall trial be where the writ is brought, by ſtatute 9 Edw. III. cap. 4.—But whether this caſe came under the ſtatute, the Judges wiſhed to be adviſed. Wherefore on another day this matter was moved in the Exchequer Chamber by Prisot, how they think it ſhall be tried. Markham: This ſeems no plea; for if the defendant had pleaded ſuch plea in Wales or Ireland, it would not have been a good plea, for it could never have been tried there. And alſo the ſtatute does not redreſs any plea except a releaſe or ſome other deed alleged in the county palatine. Wherefore, if any other matter, ſuch as death or adminiſtration, or dureſs of impriſonment, or any ſuch plea which is not a plea by deed, ſhould be pleaded, then it appears that it would have been no plea at Common Law: for if it had been a plea, thoſe in Parliament who had redreſſed the ſaid foreign plea by deed, would have redreſſed theſe other pleas, if they were pleas; and if they ſhall be adjudged pleas, they will be remedied by the equity of the ſame ſtatute. **Forteſcue:** Whereas you hold that the plea is not a plea, I think that it is a good plea; for in your caſe, if ſuch foreign pleas were alleged in Wales or Ireland, which are not pleas, I hold that they are good pleas in the ſame caſe. But in thoſe caſes,

le cas. Mes en ceux cafes ſera trie ou le brief eſt porte par le Comon Ley: car ceux terres ne furent unques rules ſolonque le cours de la Comon Ley d'Engleterre; mes aſcun foiz Cheſter, Lancheſter, et Durham furent a la Comon Ley, et coment que le Roy ad eux fait Countiepaleis, come bien poit ſans Parliement, uncore le Roy ſans Parlament ne poit prendre ſon lige home de droit: car le ple plede en le Countiepaleis ſera enconvenient deſtre trie ou le brief eſt porte, pur ceo que deins le Countiepaleis ſont divers Courts qui ont divers powers de trier tiel iſſue, et ils doivent en tiel cafes obeir le brief Roy; et iſſint ont uſe; come en cas que un de Countiepaleis ſoit vouche en le Comon Place, adonque le parole ſera mande illonque, et quand il eſt detinue (determine?) la, donques demander (remande?) ciens. Mes nul proces poit eſtre fait ne unque fuit fait a Gales ne a Ireland, nientobſtant que ſont ſoub l'obeiſance le Roy: car ſi home plede tiel en Normandy, ou en France, ou Duchland, ſi ſoit ple ou auterment ſera trie ou le brief eſt porte. (*Credo* que en tiel cas n'eſt my ple. *Vide* puis de Scotland, &c.)

f. 26. Et ſur ceo **Forteſcue** demanda de Winslad et Brown, Prenotariis du Comen Place que furent donque, coment ad eſte uſe en tiel cafes. Brown: Si aſcun ple ſoit plede, et allege en aſcun ville deins Ely; en ceſt cas ſera trie en le viſne prochein ajoynant que eſt Guildhal; car ſont iv. Counties environ le Iſle de Ely, ſcavoir Cambridge, Huntingdon, Northfolk, et Suffolk, et ſi aſcun tiel matter ſoit allege deſtre fait en aſcun tiel ville, deinz meſme le dit Iſle de Ely, que le "Venire facias" ſera direct a meſme le Viconte de meſme le County prochein a la ville ou le matter eſt ſuppoſe deins Ely, de venir Pais de la prochein ville ajoynant, iſſint ad eſte fait de choſe allege en Sandwich ou ailour deins les v. Ports; mes ceo eſt deins le County de Kent, et meſme le County environ les dits v Ports, et auxi iſſint eſt de la Franchiſe de Bury deins le County de Suffolk, et iſſint en touts les lieux avanditz ad eſte uſe de temps, &c., iſſint me ſemble que ſera en l'auter cas. Winslad: Voſtre cas n'eſt my ſemble a le cas que eſt move: car Ely eſt parcele de County de Cant., mes eſt un Franchiſe a par luy; iſſint Sandwich deins le County de Kent eſt parcele de la County. Et jeo entende qui ſi "Præcipe quod reddat" ſoit porte en le Comen Bank de terres deins lez ditz Franchiſes le brief ſera directe a le Viconte de Kent ou a aſcun auter Viconte, mes ils auront le Commiſſion: mes en le cas que eſt move de Durham il eſt un County a par luy, et iſſint eſt Cheſter et Lancaſter, qui ſont Countiepaleys, et cheſcun original de choſe que eſt fait deinz le Countiepaleis ſera pris illonque: purque nient ſemble. Et Sire, fuit ajuge en le Comen Bank ore tarde devant Sir R. Newton, ou un brief fuit ſue en le Comen Bank direct a le Viconte de Londres vers *J. S. de C. in Comitatu Cheſtriæ Armigerum* et il fuit utlage, et apres il vint en Londres, et fuit arreſté par "Capias utlagatum," et fuit retorne en le Comen Bank "Cepi corpus," et il pleda que jour de brief purchace il fuit converſe a meſme le County de Cheſter et nemy a C., et par aviſe ceſt iſſue fuit trie en le County de

trial ſhall be had where the writ is brought, by the Common Law; for thoſe lands were never ruled according to the courſe of the Common Law of England; but once on a time Cheſter, Lancaſter, and Durham were under the Common Law; and although the King has made them counties palatine, as he can well do without Parliament, ſtill the King cannot, without his Parliament, take his liege men from the law; for the plea pleaded in the county palatine ſhall not be properly tried where the writ is brought; becauſe in the county palatine are divers courts which have divers powers to try ſuch an iſſue; and they ought in ſuch caſes to obey the King's writ; and ſo they have been uſed to do; as in caſe that one of a county palatine be vouched in the Common Place, then the parol ſhall be ſent there; and when it is determined there, then it ſhall be remanded here. But no proceſs can be made, or ever was made, to Wales or Ireland, notwithſtanding that they are under the King's obedience: for if one plead ſuch a plea in Normandy, or France, or Germany, whether it be plea or otherwiſe ſhall be tried where the writ is brought. (I believe that in ſuch caſe it is no plea. *Vide poſt* of Scotland, &c.) And thereupon **Forteſcue** demanded of t. 26
Winslad and Brown, who were then Prothonotaries of the Common Place, what had been the practice in ſuch caſes. Brown: If any plea be pleaded and alleged in any town in Ely, in ſuch caſe it ſhall be tried in the neareſt adjoining venue which is a Guildhall; for there are four counties round the Iſle of Ely, viz., Cambridge, Huntingdon, Norfolk, and Suffolk; and if any ſuch matter be alleged as done in any ſuch town within the ſame Iſle of Ely, the "Venire facias" ſhall be directed to the ſame ſheriff of the ſame county near to the town in Ely where the matter is ſuppoſed, to ſummon the "Pais" of the neighbouring venue; this has been done on a matter alleged in Sandwich or elſewhere within the Cinque Ports; but this is in the county of Kent, and the ſame county ſurrounds the ſaid Cinque Ports: and alſo it is the ſame in the Franchiſe of Bury, in the county of Suffolk; and ſo in all places aforeſaid has been the cuſtom from time, &c. So it ſeems to me it ſhall be in the other caſe. Winslad: Your caſe is not ſimilar to the caſe which is moved: for Ely is parcel of the county of Cambridge, but is a liberty by itſelf; ſo Sandwich in the county of Kent is parcel of the county. And I think that if a "Præcipe quod reddat" be brought in the Common Bench, for lands within the ſaid liberties, the writ ſhall be directed to the ſheriff of Kent, or ſome other ſheriff; but they ſhall have the commiſſion. But in the caſe of Durham, now moved, it is a county by itſelf, as well as Cheſter and Lancaſter, which are counties palatine; and every original of a thing done in the county palatine ſhall be taken there: wherefore it is not at all ſimilar. And, Sir, it was but lately adjudged in the Common Bench, before Sir R. Newton, where a writ was ſued in the Common Bench, directed to the Sheriff of London, againſt "J. S. of C. in the county of Cheſter, Eſquire;" and he was outlawed, and afterwards he came to London, and was arreſted by a "Capias utlagatum," and a "Cepi corpus" was returned into the Common Bench; and he pleaded that on the day of the writ purchaſed he was reſiding [at M.?] in the ſame county of Cheſter, and not at C., and

Cheſter per un "Mittimus" directe a le Juſtice illonques commandant luy de faire proces a le Viconte de *Venire facias xij ad terminandum exitum prædictum*; et fuit remanded ciens. Purque, &c. (Et verum dixit, ut patet Trin. xxiij Henrici ſixti Ro. cccxj.) [Brown
f. 26 b. follows.] **Fortescue**: Nient ſemble; car nul iſſue poit eſtre trie en Eſcoce; pur que eſt reaſon que ceo ſoit trie ou le brief eſt porte, mes ils de la Countypaleis purront trier un choſe fait illonque aſſez bien nonobſtant que le brief ſoit commence icy, come en le cas de voucher. Et auxi ſi "Præcipe quod reddat" ſoit porte deins le Countiepaleis, et le tenant vouche en auter County qui eſt a la Common Ley, ils doivent mander le parole cieiens de faire proces, &c., ou ſi auter iſſue ſoit joine de choſe fait en auter County que eſt a la Common Ley, ils doivent mander le parolx cieins de faire proces, et trier cieins, et quand eſt trie ſera mande a eux a doner Jugement, ſi ſoit ple de terre; mes ſi ſoit ple perſonel de choſe fait en auter County, qui eſt a la Comon Ley, le parole ſera mande cieins en le Comon Bank, et illonque ſera determine, et Jugement ſera done cieins; car ils ont illonque tailly le party de droit. (*Quære hoc.*) Car ſi le defendant demurre illonques le party n'aura illques Execucion: mes *vice verſa* ſi un ple perſonel ſoit pris en le Common Bank, et iſſue ſoit joine deins le Countypaleis, ilz doivent trier, et quand eſt trie, demander cieins. Purque ſemble a nous toutz que eſt plus convenient que ceſt matter plede ſera trie deins le Countie paleis de Durham, et apres ſera mande cieins, &c. Starkey: Brief de Dette fuit porte en Londres et le plaintife declare ſur un leas fait en Londres de terre en Lancaſter: et le defendant plede ſurrendre ou le terre eſt: and fuit tenu que l'iſſue ſera trie a Lancaſter. Et *vide* H. 16, Ro. 420, ou Ric. de W. Chevaller ſuiſt brief de "Formedon" vers J. Greſlay Chevaller de E. et ſa feme en le County de Cheſtre deins le County paleis; et proces continue tanque le "Petit Cape" fuit agarde, et a le jour de "Petit Cape" retorne les tenantz allegerent cretain d'eau a Ruglay en le County de Stafford. *Et alii e contra.* Ceſt matter fuit mande en le Comon Bank deſtre trie, &c. Et puis **Fortescue** demanda de Winslad, ſi le plaintif et le defendant apperent, et un iſſue eſt joine d'un Countiepaleis, coment auroit ils jour en Countypaleis. Winslad: Sir, en ceo cas l'attorney le party certifiera le Court illonque de la jour a ſon peril, et iſſint meſme le jour ſera done. Mes *vide* en le dit cas de Savage, ou les parties auront jour *ad proximum Com. Cheſter*, &c., *tenendum*, et ne limit nul jour en certein, &c

f. 27. En Bank le Roy un "rediſſeiſin" fuit remue par brief d'Error, que un des Coroners devant que le "rediſſeiſin" fuit ſue, ne fuit Coroner a le temps, &c. *Et alii e contra.* Et ſur ceo iſſue pris et en l'Eſchequer Chambre. **Fortescue** move a les autres Juſtices coment ſemble a eux que ceſte iſſue ſera trie, ſcavoir par Pais ou par record. Prisot: Toutz les Coroners ſont faitz par brief, qui eſt matter de record; purque ſemble que eſt plus

therefore this iſſue was tried in the county of Cheſter, by a "mittimus" directed to the Juſtice there, commanding him to make proceſs to the ſheriff of a "Venire facias xij.," to terminate the iſſue aforeſaid; and it was remanded hither. Wherefore, &c. (And he was right, as appears in Trinity Term, 23 Hen. VI., Roll 411.) [BROWN follows.] **Forteſcue**: It is not ſimilar; for no iſſue can be tried in Scotland; wherefore it is right that it ſhould be tried where the writ is brought; but thoſe of the county palatine will be able to try a thing done there, well enough, notwithſtanding the writ be commenced here; as in the caſe of Voucher. And alſo if a "Præcipe quod reddat" be brought in the county palatine, and the tenant vouch in another county, which is under the Common Law, they muſt ſend the parol hither to make proceſs &c., or if another iſſue be joined on a matter done in another county which is under the Common Law, they muſt ſend the parol hither to make proceſs, and to be tried here; and when the caſe is tried, it ſhall be ſent to them to give judgment, if it be a plea of land; but if it be a perſonal plea of a thing done in another county which is under the Common Law, the parol ſhall be ſent hither into the Common Bench; and here it ſhall be determined, and judgment given here; for they have in the other place failed to right the party. (*Quære this.*) For if the defendant demur there, the party ſhall never have execution. But *vice verſâ*, if a perſonal plea be taken in the Common Bench, and iſſue be joined in the county palatine, they muſt try it, and when it is tried, remand it here. Wherefore it ſeems to all of us that it is moſt convenient that this matter pleaded ſhall be tried in the county palatine of Durham, and afterwards ſhall be ſent here, &c. STARKEY: A writ of "Debt" was brought in London and the plaintiff declared on a leaſe, made in London, of land in Lancaſter; and the defendant pleaded a ſurrender where the land lies; and it was held that the iſſue ſhould be tried at Lancaſter. And *ſee* H. 16, Roll 420, where Richard de W., Knight, ſued a writ of "Formedon" againſt J. Greſlay, Knight, of E., and his wife, in the county of Cheſter, within the county palatine; and proceſs continued until the "Petit cape" was awarded; and on the day of the return of the "Petit cape," the tenants alleged a flood at Ruggeley, in the county of Stafford; and the others the contrary. And this matter was remanded into the Common Bench to be tried, &c. And then **Forteſcue** aſked of WINSLAD, if the plaintiff and defendant appeared, and an iſſue be joined for a county palatine, how ſhall they have a day in the county palatine? WINSLAD: Sir, in that caſe the attorney of the party ſhall certify the court there of the day, at his peril, and ſo the ſame day ſhall be given. But ſee the ſaid caſe of Savage, where the parties had a day "at the next County Court of Cheſter, &c. to be holden, &c." and no day is limited for certain, &c. f. 26 b.

In the King's Bench a "Rediſſeiſin" was removed by writ of "Error," for that one of the Coroners before whom the rediſſeiſin was ſued was not Coroner at the time, &c. And the others ſaid the contrary. And thereupon iſſue was taken. And in the Exchequer Chamber, **Forteſcue** put it to the other Judges how they think that the iſſue ſhall be tried; by Pais or by Record? PRISOT: All the Coroners are made by writ, which is matter of record; f. 27.

convenient eſtre trye par le record ; car le brief eſt retournable en le Chancery. [MARTIN and others follow.]

De Termino Paſchæ, Anno xxxiii. HEN. VI.

f. 17. En l'Eſchequer Chambre **Fortefcue** reherſa coment en Parlement derrein paſſe, un ſpecial Act paſſa enconter John Pylkington Eſquier pur rape d'un feme hors de N. &c. et reherſa l'effect de l'Act, et coment par meſme l'Act fuit grante, que proces ſera fait a le Viconte de E. de faire certein proclamacion en un ville, ceſt aſſavoir que le dit John doit apparer devant les Seigniors a W. a un certein jour, &c. a reſpondre a tranſgreſſion contenus en le dit Acte, &c. et s'il ne voile, &c. adonque il ſera atteint de la tranſgreſſion, &c. et paieroit un certein ſome a la party, &c. et il diſoit coment les proclaimacions furent faits et returnes en le Chancelrie ; et le dit J. n'apparuſt my, &c. ; et puis apres le dit J. fuit pris et mis en le Bank le Roy en le garde de le Marſhal pur certeines cauſes ; pur que un tranſcript de le dit Acte ove un "Mittimus" fuit mande hors de la Chancellerie direct a nous, &c. Par que le Marſhalle fuit charge ove luy pur meſme le condemnacion contenue en meſme l'Acte : et or il vient et allegea par ſon conſeil que le dit Acte n'eſt my ſufficient en Ley, et pria eſtre diſmys, &c. car la bill que fuit en direct a's Comunes paſſa eux bien et fuit endoſſe en tiel forme, "Soit baille a's Seigniors;" et meſme la bille paſſa le Roy et les
f. 17 b. Seigniors, mes ou la bille voiloit, que le dit John reſpondroit, &c. devant le Feſte de Pentecoſt adonque prochein enſuant : pur que les Seigniors endoſſeront la bille en tiel forme. "Les Seigniors grantent en cas que il n'appert devant le Feſte de Pentecoſt, que ſera anno dñi Milleſimo c.c.c.c. li,"[1] &c. ſcavoir a le Pentecoſt prochein apres l'auter Feſte, contenu en la bille : Et pource les Seigniors granterent plus long jour que fuit grante par les comunes en quel cas les comunes devoient aver le bille areremayn, et de aſſent a le grant les Seigniors, et iſſint ne fuit my ; par que il ſemble l'Acte voide, &c. Et ſur ceo le brief de "Mittimus" et l'Acte furent leus, &c. et le brief fuit tiel, *Rex Juſticiariis ſuis*, &c. *Tranſcripcio cujuſdam billæ coram nobis in Cancellaria noſtra in filacio, &c. exhibita et auctoritate ultimi Parliament noſtri, &c. confirmatæ verſus J. P. &c. vobis mittimus*, &c. **Fortefcue :** Moy ſemble que nous ne poimus autrement entendre mes que l'Acte eſt bone icy ; car le roy ad eſcripte a nous par ſon brief, et ad nous certifie que la bill eſt conferme par auctdrite de Parliament. Purqui. ILLINGWORTH, *Chief Baron* : Ceo ne puit eſtre entendu icy come vous ditez ; car le brief, qui eſt fait forſque par un Clerk de la Chancery, ne puit faire un Acte de Parliament bone, ſi ſoit vicious en luy meſme &c. Et ſi ilz de la Chancery mandent a's Juſtice de Comen Bank un tranſcript d'un fine par un "mittimus," et en fait eſt nul tiel fine, par que ils de Comen Bank feſoient brief de "Scire facias" hors de le tranſcript &c. ne ſera la party receu adire que eſt nul tiel fine (*quaſi diceret ſic*). Pur ceo que

[1] Tottel's edition, and that of 1601, have 1452, and not 1451.

wherefore it ſeems that it is more fitting that it be tried by the record; for the writ is returnable into Chancery. [MARTIN and others follow.]

Eaſter Term, 33 HEN. VI.

In the Exchequer Chamber **Forteſcue** rehearſed how in the Parliament laſt paſt, a ſpecial act paſſed againſt John Pylkington, Eſquire, for the rape of a woman out of N. &c. and rehearſed the effect of the act, and how by the ſame act it was granted that proceſs ſhould be made to the ſheriff of E. to make certain proclamations in a town, namely, that the ſaid John muſt appear before the Lords at W. on a certain day, &c., to anſwer the treſpaſs mentioned in the ſaid act, &c.; and that if he would not, &c., then he ſhould be convicted of the treſpaſs, &c., and ſhould pay a certain ſum to the party, &c. And he then ſhowed how the proclamations were made and returned into the Chancery, and that the ſaid J. did not appear, &c., and that afterwards the ſaid J. was taken and put in the King's Bench in the cuſtody of the Marſhal for certain cauſes; wherefore a tranſcript of the ſaid act together with a "Mittimus," was ſent out of Chancery directed to us, &c., whereby the Marſhal was charged with him for the ſame condemnation contained in the act; and now he comes and alleges by his counſel that the ſaid act is not ſufficient in law; and prays to be releaſed, &c., for the bill that was directed to the Commons paſſed them properly, and was endorſed in this form:—"Let it be delivered to the Lords;" and the ſame bill paſſed the King and the Lords; but whereas the bill required that the ſaid John ſhould anſwer, &c., before the Feaſt of Pentecoſt then next enſuing, the Lords endorſed the bill in ſuch form:—"The Lords grant in caſe that he ſhall not appear before the Feaſt of Pentecoſt, which ſhall be in the year of our Lord 1452, &c.," that is, at the Pentecoſt next after the other Feaſt mentioned in the bill; and therefore the Lords granted a more diſtant day than was granted by the Commons: in which caſe the Commons ought to have had the bill back again, and have agreed to the grant of the Lords; but this was not done; wherefore it ſeems that the act is void, &c. And thereupon the writ of "Mittimus" and the act were read, &c.; and the writ ran thus:—"The King to his Juſtices, &c. A tranſcript of a certain bill in our preſence in our Chancery filed, &c., and by the authority of our laſt Parliament confirmed againſt J. P., &c., we ſend to you, &c." **Forteſcue**: It ſeems to me that we cannot otherwiſe conclude than that the act is good here; for the King has written to us by his writ, and has certified us that the bill was confirmed by the authority of Parliament. Wherefore, &c. ILLINGWORTH (*Chief Baron*): It cannot be underſtood as you ſay; for the writ, which is only made by a clerk of the Chancery, cannot make good an Act of Parliament which is vicious in itſelf, &c. And if thoſe of the Chancery were to ſend to the Juſtices of Common Bench a tranſcript of a fine, by a "Mittimus," when in fact there is no ſuch fine, whereupon they of the Common Bench were to make a writ of "Scire facias" out of the tranſcript, &c., ſhall not the party be received to ſay that there is

f. 17.

f. 17 b.

le brief que il ad fait ne fera un bon fyn ou ne fuit nul fine, &c. Purque, &c. Et puis ils manderent pur KIRKBY des rolles, et pour FAUXES, CLERK DE LE PARLEMENT, pur eſtre pris de la forme et cours de le Parlement, &c. **Forteſcue** reherſa le matter a eux: purque. KIRBY: Sir, le cours de le Parlement eſt tiel, &c. [KIRKEBY and FAUXES ſtate the forms; and PRISOT and MARKHAM follow.] **Forteſcue:** C'eſt un Acte de Parlement, et nous voillomus eſtre bien aviſe, devant que nous anulloms aſcun Acte fait en le Parlement: et paraventure le matter doit attendre juſques a le prochein Parlement, adonquez nous poimus eſtre certifie par eux de la certeintie de la matter: mez nonobſtant nous voillomus eſtre aviſes que ſera fait, &c.

* * * * * * * *

f. 18 b. Fuit tenu *ibidem* (en le cas d'Frowike) per **Forteſcue**, que un Idiot ne ſera recu de pleder par gardein ne prochein amy, mais tous foiz il ſera en propre perſon en cheſcun accion porte envers luy, et qui cunque veut pleder le meliour ple pur luy, il ſera admis, &c.

De Termino Michaelis, Anno xxxiv HEN. VI.

f. 22 b. John Jus Eſquier auterfois fuit brief de Dette de c livres envers les Executors l'un Canon de Lichfield, et il counta ſur un obligation fait par lour teſtator, &c. Et ils plederent "nient le fait de lour teſtator:" et a un "niſi prius" a S. Martins le derreine Terme fuit trove le fait le teſtator, &c., et damages. Et ore WANGFORD rehercea le matter, et pria ſon Jugement, ſcavoir de la principal dette des biens le mort, s'ils ont, et ſi nemy, des biens les
f. 24. executors propres, &c. [LITTLETON, WANGFORD, and others follow.] A auter jour en l'Eſchequer Chamber PRISOT rehearcea ceſt matter. **Forteſcue:** Moy ſemble que le Jugement des biens le mort *tantum*, &c.; car eſt diverſite ou eſt le fait l'executor, et ou le fait le teſtator, &c.; et ſi cheſcun executor ſera compelle de conuſtre cheſcun fait monſtre envers eux, ſera grand inconvenience, &c.; car ſi le Jugement ſeroit des biens les executors propres, &c., adonque il ne voillent dedire nul maner fait par doubte de perdre lour biens propres, et iſſint pur tiel doubte cheſcun executor voil confeſſer cheſcun faux fait, &c., et les biens le teſtator iſſint ſeront torcieuſement expendus et paies. Mes ſi lexecutor plede un releas fait a luy meſme, auterment eſt; car ceo eſt ſon fait demeſne, &c.: et voſtre cas n'ad my eſte ſovent fois ajuge devant ces heures, mes nient moins uncore le execucion ad eſte ajuge ſovent fois de recoverer des biens de mort, ſi &c., et ſi nemy, des biens les executors propres, &c.: mes ſi ceſt Jugement fuit ore premierement eſtre ajuge, jeo entends que nul Juge ore voille ajuger que le plaintif recovere des biens l'executors propres, &c. Mes pur ceo que tants dez Jugements ont eſte dones en cele cas, pur ceo que la Ley eſt ore iſſint, &c., et l'uſage fait Ley ſans auter reaſon. Car l'uſage en brief de Dette eſt, que ſi le defendant

no such fine? (implying that he would). Because the writ which was made would not make a good fine, where there was no fine, &c. Wherefore &c. And then they sent for KIRKEBY of the Rolls, and for FAUXES, Clerk of the Parliament, to inquire of the form and course of Parliament, &c. **Fortescue** rehearsed the matter to them. Whereupon KIRKEBY: Sir, the course of Parliament is, &c. [KIRKEBY describes the practice of Parliament generally, and FAUXES tells the course on this particular bill. PRISOT and MARKHAM follow.] **Fortescue**: This is an Act of Parliament; and we wish to be well advised f. 18 b. before we annul any act made in Parliament; and perhaps the matter ought to stand over until the next Parliament, and then we can be certified by them of the certainty of the matter; but notwithstanding, we would be advised as to what shall be done, &c.

* * * * * * * *

It was held by **Fortescue** (in Frowike's case), that an Idiot shall not be received to plead by guardian or next friend; but he shall always be in his own person in every action brought against him; and whosoever will plead the better plea for him, it shall be admitted, &c.

Michaelmas Term, 34 HEN. VI.

John Jus, Esquire, heretofore sued a writ of "Debt" for one hundred pounds against the f. 22 b. executors of a canon of Lichfield; and he counted on an obligation made by their testator, &c. And they pleaded "not the deed of their testator:" and at a "Nisi prius" at St. Martin's in last term it was found as the deed of the testator, &c., and damages. And now WANGFORD rehearsed the matter, and prayed his judgment; to wit, of the principal debt out of the goods of the deceased, if they have any such, and, if not, of the goods of the executors themselves, &c. [LITTLETON, WANGFORD, and others follow.] Another day f. 24. in the Exchequer Chamber, PRISOT rehearsed this matter. **Fortescue**: I am of opinion that judgment shall be of the goods of the deceased only, &c. For there is a difference when it is the deed of the executor, and when it is the deed of the testator, &c. And if executors were required to acknowledge every deed shown against them, there would be great mischief, &c. For if the judgment should be of the goods of the executors themselves, &c., then they would not deny any kind of deed for fear of losing their own goods; and so from this fear every executor would acknowledge every false deed, &c., and the goods of the testator would thus be wrongfully spent and paid away. But the case is different when the executor pleads a release made to himself, for this is his own deed, &c. And such cases as yours have not been often adjudged before this; but, nevertheless, the execution has often been adjudged to recover from the goods of the deceased, if &c., and, if not, from the goods of the executors &c. But if this judgment had now to be given for the first time, I do not believe that any judge would allow that the plaintiff should recover from the goods of the executors, &c. But as so many judgments have been given in cases of this sort, because the law stands thus, &c., usage makes law without any other reason. For the practice in a writ of "Debt" is,

plede un acquitance, ou releas en barre, &c., et le plaintif dedit le fait, iſſint que ils ſont a iſſue &c., et apres le defendant face defaut, il ſera condenne, &c.; mes ſi le defendant en brief de "Tranſgreſſion" plede un releas, et le plaintiff dedit &c., et apres iſſue &c. le defendant face defaut; en ceo cas ne ſera mes un Enqueſt par defaut, et nul condemnation, come ſera en le brief de Dette &c.: mes nul ſcait dire le diverſite de la reaſon perentre un cas et l'auter, mes l'uſage *tantum*, &c., Et ſi aſcun home dedit le fait ſon anceſter, le quel ſoit trove ſon fait; en ceſt cas il ne fera fine, come s'il uſt dedit ſon fait demeſne, mes il ſera amerci, purque &c.: iſſint icy, &c. [PRISOT and others follow.] YELVERTON: Ou les executors pledent *pleinement adminiſtrerent* et eſt trove auxi, le plaintif recovera tant des biens le mort. Et ſi ſur le "Fieri facias" le Viconte retorne, *quod convertit eadem bona in uſus ſuos proprios*, or il ſera charge de ſes biens propres, pur ceo que ceſt fait eſt par ſon tort demeſne, &c. Mes ou ils pledent *pleinement adminiſtrerent* et eſt trove par verdit que ils n'ont rien ente mains; en ceſt cas le plaintif ne prendra rien par ſon breve, &c. MARKHAM: Ceo eſt voier, et le plaintif eſt mis a ſon novel brief de Dette quand ils ont rein, &c. **Forteſcue**: Si fait trove que ils ont aſcun maner parcele entermains, le plaintif apres quand ils ont, aura un "Scire facias" hors de meſme le record pur le remanent, &c. . . . Et puis apres en le Common Place WANGFORD pria tiel jugement come le Court ſemble un ou l'autre. [DANVERS gives an opinion.] PRISOT a WANGFORD: Le opinion de touts mes Compagnons forſque MOILE et moy eſt, que ils ne feront charges de les biens propres: iſſint eſt l'opinion de pluſors ces auters Juges de le Bank le Roy, uncore ceo me ſemble encontre reaſon: car jeo ay veu le matter ajuge, &c. En meſme le cas ſur un obligation le teſtator dedit par les executors, et le Jugement fuit que le plaintif recovera le dette des biens le mort, ſi &c., et ſi nemy, le ſes biens propres, et il allegea deins quel an, et iſſint il diſoit en l'Eſchequer Chambre l'auter jour. Mes **Forteſcue** diſoit, que par aventure fuit ajuge en termes come il dit, mes verament il entendit que le matter ne fuit unquez bien argue ne diſpute; et n'eſt my comon uſage nient plus: purque de tiel Jugement il aura mes petit regard et conſideration, &c. *Et adjornatur uſque proximum Terminum. Et poſtea* fuit agarde par ASHTON, DANBY, et MOILE, que le plaintif recovera le dette des biens le mort, *tantum*, s'il en ad, et ſi nemy *de bonis ſuis propriis*, &c.

De Termino Hillarii, Anno xxxiv. HEN. VI.

f. 30 b. En l'Eſcheker Chambre devant touts les Juſtices d'Angleterre fuit reherce par HEIDON, coment John Andrew auterfois ad ſue un brief de Conſpiracy fonde ſur le novel Statute ſur enditement de treſpas faits en foreine Counties envers Thomas Hous Chaplein et un John F.

that if the defendant plead an acquittance or releaſe in bar, &c., and the plaintiff deny the deed, ſo that they are at iſſue, &c., and afterwards the defendant make default, he ſhall be condemned, &c. But if the defendant in a writ of "Treſpaſs" plead a releaſe, and the plaintiff deny, &c., and then iſſue &c., and the defendant make default; in this caſe there ſhall be only an inqueſt by default, and no condemnation, as there would be in the writ of "Debt," &c. But no one knows the reaſon for diſtinction between the caſes, except that it is the cuſtom, &c. And if any one deny the deed of his anceſtor, which is found to be his deed, in ſuch caſe he ſhall not make fine, as if he had denied his own deed, but ſhall be in mercy; wherefore &c.: ſo here, &c. [PRISOT and others follow.] YELVERTON: Where executors plead "plene adminiſtraverunt," and that is found to be the caſe, the plaintiff ſhall have recovery only out of the goods of the deceaſed. And if to the "Fieri facias" the ſheriff return that "he converted the ſaid goods to his own uſe," then he (the executor) ſhall be charged out of his own goods, becauſe that act was his own wrong, &c. But where they plead "plene adminiſtraverunt," and it is found by verdict that they have nothing in their hands, in that caſe the plaintiff will take nothing by his writ, &c. MARKHAM: This is true; and the plaintiff is put to his new writ of "Debt," when they have anything, &c. **Forteſcue**: If it be found that they have in any way parcel of the teſtator's goods in hand, the plaintiff afterwards, when they have it, ſhall have a "Scire facias" out of the ſame record for the balance, &c. . . . Afterwards, in the Common Bench, WANGFORD prayed judgment as the Court (one or the other) ſhould think right. [DANVERS gives an opinion.] PRISOT to WANGFORD: The opinion of all my companions, excepting MOILE and myſelf, is that they ſhall not be charged of their own goods; and this is the opinion of many of the other Judges of the King's Bench; ſtill it ſeems to me contrary to reaſon; for I have ſeen the matter adjudged &c. in the ſame caſe on an obligation of the teſtator denied by the executors, and the judgment was that the plaintiff ſhould recover the debt of the goods of the deceaſed, if &c.; and if not, of their own goods. (And he cited the year, and ſo he argued the other day in the Exchequer Chamber). But **Forteſcue** ſaid that, perhaps it was adjudged in the terms he ſtates, but truly he thought that the matter was never well argued or diſputed; neither was it the common practice; wherefore of ſuch a judgment he would have but little regard and conſideration, &c. And the caſe was adjourned until the next term. And afterwards, to wit in Hilary Term next enſuing, it was awarded by ASHTON, DANBY, and MOILE, that the plaintiff ſhould recover the debt out of the goods of the deceaſed *only*, if the executors had any; and if they had not, then out of their own goods, &c.

Hilary Term, 34 HEN. VI.

In the Exchequer Chamber, before all the Juſtices of England, it was rehearſed by HELION, how John Andrew heretofore ſued a writ of "Conſpiracy," founded on the new ſtatute upon indictment for treſpaſs committed in foreign counties, againſt Thomas Hous, Chaplain, and

Et le dit John F. pleda "de rien culpable" generalment; et le dit Sir Thomas juſtifia pur un ſpecial cauſe devant le jour ſuppoſe, ſans ceo que il fuit culpable apres ceſt temps. Sur qui apres le matter fuit trove, et trie tout pur le plaintif envers ambideux a's damagez de c. livres. Et or le dit John F. fue attaint en le Bank le Roy ſole, entreleſſant le dit Sir Thomas envers le dit John Andrew, et le Petit xij. Et, Sir, il ad allege le faux ſerment par tiel forme, ſcavoir, *Quod falſum fecerunt ſacramentum in omnibus quæ verſus ipſum Johannem F. dixerunt*, &c. Sir, ceſt matter ad eſte move en Bank le Roy devant ceſt temps, et ceſt un Queſtion, ſi un aura "Attaint" ſole entreleſſant l'autre, &c., auxibien des damages come de le principal, ou nemy. Et, Sir, &c. &c. [GENNY, DANBY, and others
f. 32. follow.] MARKHAM: Me ſemble le brief bon pris per l'un: car de choſe qui eſt entiere qui ne poit eſtre ſevere, come Dette recovere envers deux, ou terre recovere envers deux, ou tielx caſes lour perte eſt owel: purque ils doivent joindre en action a aver "Attaint," &c. Mes un treſpas fait per deux ne poit eſtre joint per nul voie: et le plaintif en brief de Treſpas, nient obſtant que ils pledent joint tenancy, poit aver ſeveral "Venire facias." Iſſint ils purront aver ſeverals "Attaints" chefcun aperluy, et *vice verſa* nemy. Car ſi un treſpas ſoit fait a deux des biens emportes, ou *de fractione* d'un obligacion pur c livres; en ceſt cas s'ils perdent, lour perte eſt joint: et ils doivent icy joindre en "Attaint" pur le joint poſſeſſion que ils ont perdu. **Fortescue** luy interrupta et diſoit: Vous argues de prover que l'un poit aver "Attaint" de la principal choſe: mez de ceſt point le greindre part de Touts nous ſemble que il aura clerement: purque argues des damages. MARKHAM: Sir, me ſemble des damages auxi; car les damages ne ſont forſque come un acceſſory de le principal: car ſi ſoit trove non culpable per l'Attaint, en ceſt cas les damages ſont alles a toujours, &c. Iſſint de aſſigner le faux ſerment en le principal et en les damages enſemble, n'eſt aſcun inconvenience. Et Sir, *poſito* que ambideux purront joindre en "Attaint" de damages *tantum*, uncore ceo ne prove mes que l'un poit aver "Attaint" des damages *tantum*, auxi bien come brief d'Error *tantum*, et per le reverſal de l'un tout le record ſera reverſe envers l'autre, ſoit il culpable ou nemy, &c. **Fortescue**: Ils doivent ſuir brief d'Error jointement: car l'un poit eſtre ſompns et ſevere en ceſt cas, &c. MARKHAM: Nemy Sir, mes que fuit en tiel cas ou "Sommons et Severance" purra eſtre en primer accion, &c., nient plus que en "Attaint," &c. [ARDERN and PRISOT follow.] **Fortescue**: Me ſembla que ambideux doivent joindre en "Attaint" *omnino*. Et a le cas que DANVERS ad mis d'un recoverie en valu envers deux, et le tenant ſue d'aver en valu vers l'un, que il aura "Attaint" ſole, &c., jeo entende le contrary; car le
f. 33. Jugement eſt joint envers eux de recoverer une entiere choſe envers ambideux. Iſſint eſt en le cas en qui nous ſumus or des damages; et celuy en revercion que prie eſtre receu, ne poet autrement mes de ſuir ſole; car le tenant a terme de vie que ſuit defendant, ſuit hors de

one John F.; and the ſaid John F. pleaded "Not guilty" generally; and the ſaid Sir Thomas juſtified for a ſpecial reaſon before the day ſuppoſed, without this that he was guilty after that time. Whereupon the matter was afterwards tried, and it was found wholly for the plaintiff againſt both of them; to his damage 100*l.*: and now the ſaid John F. ſingly ſues an "Attaint" in the King's Bench, omitting the ſaid Sir Thomas, againſt the ſaid John Andrew and the petty jury. And, Sir, he has alleged the falſe oath in this form, viz., "that they made a falſe oath with reſpect to all things which againſt the ſaid John F. they ſaid, &c." Sir, this matter has been heretofore mooted in the King's Bench; and it is a queſtion if one ſhall have an "Attaint" ſingly, omitting the other &c., as well in reſpect of the damages as of the principal matter, or not. And, Sir, &c. &c. [GENNY, DANBY, and others follow.] MARKHAM: It ſeems to me that the writ is well taken by the one; for of a thing f. 32. which is entire and cannot be ſevered, as debt recovered againſt two, or land recovered againſt two, or ſuch caſes, their loſs is equal; wherefore they muſt join in action to have an "Attaint," &c.: but a treſpaſs committed by two cannot be joint in any way; and the plaintiff in a writ of "Treſpaſs," notwithſtanding that they plead jointly, can have ſeveral [writs of] "Venire facias." So they can have ſeveral "Attaints," each by himſelf; and *vice verſâ* not. For if a treſpaſs be done to two, ſuch as carrying off their goods or breaking [the condition of] a bond for 100*l.*; in ſuch caſe, if they loſe, they loſe jointly: and they muſt here join in "Attaint" for the joint poſſeſſions which they have loſt. **Forteſcue** interrupted him, and ſaid: You argue to prove that one can have "Attaint" in reſpect of the principal matter; but on this point the majority of us all think that he ſhall clearly have it; wherefore argue on the damages. MARKHAM: Sir, I think the ſame of the damages alſo; for the damages are only as an acceſſory of the principal: for if he be found not guilty in the Attaint, in ſuch caſe the damages are gone for ever, &c. So, in aſſigning the falſe oath in the principal matter and in the damages together, there is no inconvenience. And, Sir, granted that both ſhall join in an "Attaint" in reſpect of damages only, ſtill this does not prove anything but that one can have an "Attaint" of damages only, as well as a writ of "Error" only; and by the reverſal as to one, the whole record ſhall be reverſed againſt the other, be he guilty or not, &c. **Forteſcue**: They ought to ſue a writ of "Error" jointly; for one can be ſummoned and ſevered in this caſe, &c. MARKHAM: Not ſo, Sir, except it were in ſuch caſe where ſummons and ſeverance may be in the firſt action, &c., no more than in Attaint, &c. [ARDERN and PRISOT follow.] **Forteſcue**: It ſeems to me that both ought to join in "Attaint" in every reſpect. And in the caſe which DANVERS has ſuppoſed of a recovery in value being had againſt two, and the tenant ſuing to have in value againſt the one, and of his being able in that caſe to have an "Attaint" ſingly, &c., I think the contrary; for the judgment is a joint one againſt them, to recover an entire thing againſt both. So it is, in the f. 33. preſent caſe, of damages; and he in reverſion, who prays to be received, cannot do otherwiſe than ſue ſolely; for the tenant for term of life, who was the defendant, was out of court,

court, et ne fuit party a le trial. Et Sir, le grand chofe que eſt parle de la contrary part en ceſt cas eſt, que ſeroit miſchief ſi l'un ne purroit ſuir ſans l'auter, et ſi l'auter ne veut ſuir, le nonſuit l'un ſera le nonſuit d'ambideux. Mes de ouſter ceſt ambiguity, et de voir un mene de ceſt miſchief, eſt bien fait: car me ſemble clerement, que en chefcun manner "Attaint" ſi ſoit fonde auxibien ſur ple perſonel, l'ou nul "Sommons et Severance" giſt en le premier brief, comme autrement, que "Sommons et Severance" iſſeront en "l'Attaint" nien obſtant: et ſi ſoit, adonque eſt inconvenient que ambideux furent enſemble, et ſi l'un veut eſtre nonſuite, que il ſera per ceo conclu tout temps enapres, &c., et il ſera ſevere, et celuy que veut ſuir ſuira avant. Et Sir, purque ne poet "Sommons et Severance" geſir en chefcun maner "Attaint" fonde ſur un perſonel action, auxibien come ſur un "Audita querela," le quel eſt plus proprement un perſonel action que aſcun "Attaint" eſt? Car en "Audita querela" "Sommons et Severance" giſt, come fuit ajuge *Termino Paſchæ, Anno* 2c Edw. 3. Et auxi "Sommons et Severance" giſt en brief de "Gard," et en brief de "Detinue des Charters" per le Common Ley; et uncore le proces de utlagarie ne giſt en meſme le brief. Et touts nous ſumus accordes que ils bien purront ſuir enſemble; et ſi oit, adonque n'eſt my reaſon que en ceſt cas le nonſuit de l'un ne grevera l'auter; car l'ou eſt dit que le "Sommons et Severance" ne giſt en "Attaint," mes l'ou "Sommons et Severance" giſt en le premier brief; jeo entende nule raiſon purquoy ſeverance giſt plus en l'un cas que en l'auter; car l'Attaint ne ſuit la nature de le premier brief, ne eſt ſemblable a nul auter brief forſque a luy meſme. Et jeo entends bien que eſt un Maxime en noſtre Ley, que en chefcun perſonel action le nonſuit de l'un ſera le nonſuit d'ambideux, forſque en tielx caſes qui ſont forpris per le Statut, come execucion ou tiels, &c., mes nienobſtant ceſt Maxime ne purra eſtre pris auxy generalment come eſt parle; car jeo entende que ſera pris mes en tiels caſes ou eſt le fait la party meſme. Come ſi home prend a luy et a un eſtranger un obligacion de certain ſomme deue a luy; en ceſt cas ſi le eſtranger ne veut ſuir, l'auter eſt ſans remedy; purque ſera entendu ſon fait, et ſa folly demeſne, qui voudroit iſſint faire, &c. Mes auterment eſt ſi deux ſoient obliges per Statut marchant ou par recogniſance en certain ſomme, et ils ont paie, et ont lour acquitance, et nien-obſtant le oblige ſue execucion envers eux, ou envers un d'eux, or ceſt execucion ſue n'eſt lour fait, mes le fait le plaintiff; purquoy en ceſt cas ils ſont compelles de ſuir or pur lour diſcharge, ceſtaſcavoir per "Audita querela," en quel cas giſt Severance. Iſſint ſi brief de Tranſgreſſion porte envers deux, et ils ſont troves culpables a's damages &c., or ſi ceo ſoit trove per faux ferment, ceo n'eſt lour fait demeſne, mes le fait d'un faux verdit: purque eſt raiſon que ils ont remedy per "Attaint" enſemble, et que le nonſuit de l'un ne grevera
f. 33 b. l'auter: purque me ſemble que le plaintiff poet abriger le faux ferment. Car en chefcun brief ou il requeſte nul defence, come en brief de "Dower," "Aſſiſe de novel diſſeiſin." "Per quæ ſervitia" et "Attaint" la party pleinante poet abriger: car le ſpecial chofe de lour

and was not a party to the trial. And, Sir, the principal thing which is said on the other side in this case is, that there would be mischief, if one could not sue without the other; and if the other will not sue, the nonsuit of the one will be the nonsuit of both. But to get rid of this ambiguity, and to see a way out of this mischief, is well done: for it seems to me clearly that in each kind of "Attaint," if it be founded as well on personal plea, where no "Summons and Severance" lies in the first writ, as otherwise, "Summons and Severance" shall issue in the "Attaint" notwithstanding. And if so, then it is inconvenient that both should sue together; and that if one wish to be nonsuited, he shall be thereby concluded for ever afterwards, &c.: and he shall be severed; and he who wishes to sue shall sue on. And, Sir, why cannot "Summons and Severance" lie in each kind of "Attaint" founded on a personal action, as well as on an "Audita querela," which is more properly a personal action than any "Attaint" is? For, in an "Audita querela," "Summons and Severance" lies, as was adjudged in Easter term, 20 Edw. III. And also "Summons and Severance" lies in a writ of "Ward," and in a writ of "Detinue of Charters" by Common Law; and still the process of outlawry does not lie in the same writ. And we are all agreed that they may well sue together; and if it be so, then there is no reason why, in this case, the nonsuit of the one shall not prejudice the other; for whereas it is said that the "Summons and Severance" do not lie in "Attaint," except where "Summons and Severance" lie in the first writ; I understand no reason why severance lies more in one case than in the other; for the Attaint does not follow the nature of the first writ, and is not similar to any other writ than itself. And I think clearly that it is a maxim in our law, that in every personal action the nonsuit of the one shall be the nonsuit of both, except in such cases as are excepted by statute, as execution, or such like, &c. But notwithstanding, this maxim shall not be taken in as large a sense as the words import; for I think that it shall only be taken to apply only in those cases where it is the act of the party himself. As if a man take to himself and a stranger a bond for a certain sum due to himself; in such case, if the stranger will not sue, the other is without remedy; wherefore it shall be understood as his own act and folly in doing such a thing, &c. But it is otherwise if two be bound by statute merchant or recognizance in a certain sum, and they have paid, and have their acquittance, and yet the obligee sues execution against them or against one of them; in such case the execution sued is not their act, but the act of the plaintiff; wherefore they are in this case compelled to sue for their discharge, that is to say, by "Audita querela," in which case severance lies. So, if a writ of "Trespass" be brought against two, and they be found guilty as to the damages, &c., now if this be found by false oath, it is not their act, but the act of a false verdict; wherefore it is reasonable that they have their remedy by "Attaint" together, and that the nonsuit of the one shall not injure the other; wherefore it seems to me that the plaintiff can abridge the false oath. For in every writ where he requests no defence, as in writ of "Dower," f. 33 b.
"Assize of novel disseisin," "Per quæ servitia," and "Attaint," the party complaining can

demande n'eſt ſpecifie en le brief mes per ſpecial allegacion &c. YELVERTON: A le cas que Mon maiſtre PRISOT ad mis de l'abrigement . . . . . Et Sir, quant a ceo que eſt move per Mon maiſtre Fortefcue que "Sommons et Severance" giſt en "Attaint," jeo n'entende que ceo fuit unques Ley mes ou Severance giſoit en le premier brief, &c.: car jeo entende que chefcun Attaint enſuit le nature de le premier brief. . . . . **Fortefcue:** Jeo voile bien que lun aura "Attaint" ſole des damages ove un ſurmis, ſcavoir de ſurmettre coment il ad tout paie, &c. [YELVERTON, NEDHAM, and others follow.] Et arguebant ulterius divers Apprentices et touts les Sergeants et touts les Juges par deux jours, &c.; et le grande choſe que fuit tenu par **Fortefcue** que le brief abatera, fuit, pur ceo que Sommons et Severance purront eſtre en "Attaint" a ſa entent auxi bien ou nul Severance giſoit en le premier brief, come ſi feroit &c. YELVERTON: . . . . . Come eſt la Ley d'Angleterre, ſcavoir, ſi l'un ſoit ſomme et ſevere en ple de terre, et l'autre ſuira avant et recovera l'un moity; l'autre qui fuit ſevere, entrera ove luy, &c. Et ils deux arreremain purront prendre autre "præcipe quod reddat" de l'autre moity. Et ſi celuy qui fuit premier ſevere, veut eſtre ſevere arreremain, il poet; et quand l'autre qui ſuit avant ad recu le moity de l'autre qui fuit ſevere, poet entrer arreremain en ceſt part. Et par infinite ils purront ſuir juſques ſoit ad *non quantum.* **Fortefcue:** Celuy qui eſt ſevere ne purroit entrer en votre cas s'il avoit releaſe al tenant adevant, &c. YELVERTON. . . . . (*Vide plus inde Michaelis tricefimo quinto Hen. VI. fo.* 19.)

De Termino Michaelis, Anno XXXV. HEN. VI.

f. 19. En l'Eſchequer Chambre devant les Juſtices d'Angletere, &c., CHOKE reherce coment J. Andrew avoit ſue un brief de Conſpiracie ſur le Statute *de Anno* 8 *Regis nunc* envers Tho. H. Clerk, et un J. C. de ceo que ils conſpirerent d'enditer le dit J. A. en un forein County, &c., en quel brief le dit Tho. H. pleda "de rien culpable," et l'autre defendant, pleda un auter matter, &c; et ambideux iſſues furent troves encontre le defendant, et damages trobles a c. marks, &c.; ſur que le dit Tho. H. un des defendants ad or ſue "Attaint" ſur meſme le ſerment, et aſſigne le faux ſerment *in omnibus quæ dixerunt verſus eum,* &c. Et le dit A. ad demande Jugement de brief, entant que "l'Attaint" n'eſt pas porte en les noms les dits Thomas H. et J. jointment, pur ceo que il aſſigne le faux ſerment ſolement en les damages qui ſont entieres, et ne poient eſtre ſeveres; et pria &c. CHOKE: Et nous prions que le
f. 20. brief ſera ajuge bon, &c. [HAYDON and LITTLETON follow.] **Fortefcue:** Sir, quant a ceo qu'eſt dit que ſeverals Attaints feronts maintenus ſur un ſerment, &c., ceo n'e t pas iſſint: car ſur un iſſue on n'aura forſque un Attaint &c. Et quant a le cas que ad eſte mis ſi "Formedon" ſoit porte de la moity de l'un manoir &c. ſuppoſe que un tiel done le manoir &c., et le quel moity ſon anceſtor *in purpartium tenuit,* &c., et le tenant dit que il ne dona pas, &c.; et eſt trove que il ne dona, et ceo affirme per attaint, &c., et puis l'autre porte

abridge; for the ſpecial ſubject of their demand is not ſpecified in the writ, but by ſpecial allegation, &c. YELVERTON: As to what my maſter, PRISOT, has put forward concerning abridgment . . . And, Sir, as to that which is moved by my Maſter **Forteſcue**, that "Summons and Severance" lies in Attaint; I do not think that that was ever law, except where ſeverance lay in the firſt writ, &c.: for I think that every Attaint follows the nature of the firſt writ . . . **Forteſcue**: I am willing that one alone ſhall have an "Attaint" in reſpect of the damages, with a ſurmiſe, viz. ſurmiſing how he has paid all, &c. YELVERTON, NEDHAM, and others follow.] And the arguments by divers apprentices, and all the Serjeants and all the Judges went on further for two days; and the great thing holden by **Forteſcue**, viz. that the writ ſhould abate, was becauſe, in his opinion, Summons and Severance might be in an "Attaint," as well where no Severance lay in the firſt writ as where it did, &c. YELVERTON: The law of England is that if one [demandant] be ſummoned and ſevered in a plea of land, and the other ſue on, and recover a moiety, the one who was ſevered ſhall enter along with him, &c.; and they two can take another "Præcipe quod reddat" for the other moiety. And if he who was firſt ſevered wiſhes to be ſevered again, he can ſo be; and when the other, who ſued on, has recovered the moiety of the other who was ſevered, he can enter again on that part. And they ſhall be able to ſue *ad infinitum* until it come to *non quantum*. **Forteſcue**: He who is ſevered would not be able to enter in your caſe, if he had releaſed to the tenant before, &c. YELVERTON . . [See further, Michaelmas, 35 Hen. VI., f. 19.]

Michaelmas Term, 35 HEN. VI.

In the Exchequer Chamber, before the Juſtices of England, &c., CHOKE rehearſed how f. 19
J. Andrew had ſued a writ of "Conſpiracy" on the ſtatute of the eighth year of the preſent King, againſt Thomas H. Clerk, and one J. C., for that they conſpired to indict the ſaid J. A. in a foreign county, &c.: in which writ the ſaid Tho. H. pleaded "Not guilty," and the other defendant pleaded another matter, &c.; and both iſſues were found againſt the defendants, and damages trebled to one hundred marks, &c. Whereupon the ſaid Tho. H., one of the defendants, has now ſued an "Attaint" on the ſame oath, and aſſigned falſe oath, "in all that they ſaid againſt him," &c. And the ſaid A. has demanded Judgment on the writ, inaſmuch as the Attaint is not brought in the names of the ſaid Thomas H. and J. jointly; becauſe he aſſigns the falſe oath ſolely in reſpect of the damages, which are entire and cannot be ſevered. And he prayed, &c. CHOKE: And we pray that the writ ſhall be adjudged good, &c. &c. [HAYDON and LITTLETON follow.] **Forteſcue**: Sir, as to what is ſaid, that ſeveral Attaints f. 20.
ſhall be maintained on one oath, &c., it is not ſo; for on one iſſue one ſhall only have one Attaint, &c. And as to the caſe that has been put forward, that if a "Formedon" be brought for the moiety of a manor &c., ſuppoſing ſuch an one granted the manor &c., and which moiety his anceſtor held in purparty, &c., and the tenant ſays that he did not grant &c., and it is found that he did not grant, and this is affirmed by the Attaint, &c., and then the other brings another

auter " Formedon" de l'autre moitie, et ſur meſme le doune, que il ne ſera eſtoppe adire que il dona; Sir, jeo grante bien; et la cauſe eſt, pur ceo que l'effect de l'iſſue eſt, le quel il dona meſme le moitie ou nemy, et nient plus. Car ſi un home porte " Præcipe quod reddat" envers un autre, et tenant plede jointenancy per fait, et le demandant maintient ſon brief, et trove eſt ove le tenant et affirme per Attaint, que ils ſont jointenants, &c., donques s'il porte autre brief envers ambideux, et il plede meſme le fait en barre, le demandant ne ſera
f. 20 b. eſtoppe adire, " Nient le fait," ou " riens paſſa;" et ceo nient obſtant que il fuit trove q'ils furent joint, et affirme per Attaint: car l'effect de l'iſſue ne fuit le fait, mes le jointure: et iſſint eſt en le cas que ad eſte mis; car meſque ils traverſent le done de tout le mannere, uncore l'effect de l'iſſue n'eſt que de meſme le porcion, &c. Et *a fortiori* s'il ſoit iſſint, que ceo parcener devia ſans iſſue, iſſint que l'autre ad la moitie, il meſme ne ſera eſtoppe nient obſtant que il ſoit partie et privie, &c. Et ceo entant que le ſubſtance de l'iſſue n'ex ende forſque a meſme le portion; donques a plus fort un eſtranger ne ſera pas lie per tiel Attaint, &c. Et quant a l'auter cas que ad eſte mis per Littleton, ſcavoir que ſi deux homes ſont ſue en Court Chriſtien jointment pur un choſe que appertient al' Court le Roy, que l'un ſole aura " Attachment ſur prohibition," et l'auter un Attachment, &c. Sir, ceo ne tient pas lieu generalment, mes covient la eſtre un diſtinction: car ſi le cas ſoit iſſint, que deux homes ſoient ſues en Court Chriſtien pur ſlander, ou pur baterie, &c., icy cheſcun d'eux aura " Attachment ſur prohibition:" et ceo eſt la cauſe; car ſont vexes pur un ſeveral choſe, &c.: donques s'ils ſues pur choſe ſeverals ils auront ſeverals actions; mes s'ils ſoient ſues pur trover un lampe, ou chandele en un Egliſe per reaſon de lour terre, de cele ils auront jointe " Attachement ſur prohibition;" et iſſint le mannere de le ſuir de l'Attachement covient d'enſuir la nature de la choſe pur quel ils ſont ſues; car ſi ceo ſoit ſeveral, ils auront ſeverals actions, et s'il ſoit joint, ils auront joint actions, Come en cas en action de Debte porte ſur un obligacion vers deux, et ambideux dedient le fait, et trove eſt le fait d'ambideux; icy ne poient joindre en Attaint, mes doivent aver ſeverals Attaints, pur ceo que la choſe purque l'Attaint giſt, eſt ſeveral; car le fait l'un ne puit eſtre le fait l'autre: mes s'ils uſſent plede un releaſe et le plaintif dedit le fait, et trove eſt que il n'eſt pas le fait, &c., icy ilz joindront en Attaint, pur ceo que il fuiſt un joint iſſue, et un joint ple, et un joint choſe, &c. Et iſſint icy de le principal point ils peuvent aver ſeverals Attaints aſſez bien, pur ceo que ceſt eſt ſeveral; car l'un poit eſtre trove culpable, et l'autre nemy, et iſſint ſeveral: mes les damages ſont un joint choſe ſurdant ſur ambideux jointment, et nient ſeveral, des queux il ne purront aver ſeverals Attaints. Et auxi un " Audita querela" puit aſcun fois eſtre porte par touts ceux qui ſont lies jointment, et aſcun foiz cheſcun de eux aura ſole " Audita querela;" come ſi Statut Marchand ſoit fait a un per deux, et celuy a que le Statut eſt fait, fait un releaſe ou defeaſance ſur meme le Statut, et puis ceſty a que

"Formedon" for the other moiety, and on the ſame gift, that he ſhall not be eſtopped to ſay that he granted it,—Sir, I quite agree; and the reaſon is, becauſe the iſſue is, whether he gave the ſame moiety or not, and nothing more. For if a man bring a "Præcipe quod reddat" againſt another, and the tenant pleads joint-tenancy by deed, and the demandant maintains his writ, and it is found for the tenant, and affirmed by Attaint, that they are joint tenants &c., then if he brings another writ againſt both, and he pleads the ſame deed in bar, the demandant ſhall not be eſtopped to ſay, "Not the deed," or "Nothing paſſed;" f. 20 b. and this, notwithſtanding that it was found that they were joint tenants, and that it was affirmed by the Attaint; for the effect of the iſſue was not the deed, but the joint-tenancy; and ſo it is in the caſe which has been put forward; for although they traverſe the grant of the whole manor, ſtill the effect of the iſſue is only of the ſame portion, &c. And *à fortiori* if it be ſo that this parcener die without iſſue, ſo that the other has the moiety, he himſelf ſhall not be eſtopped, notwithſtanding that he is party and privy, &c. And this is for that the ſubſtance of the iſſue does not extend ſave to the ſame portion: then much rather ſhall a ſtranger not be bound by ſuch Attaint, &c. And as to the other caſe put forward by Littleton, viz., that if two men be ſued in Court Chriſtian jointly for a matter appertaining to the King's Court, one alone ſhall have "Attachment on prohibition," and the other an "Attachment," &c., Sir, this does not hold good ſo generally but that there muſt be a diſtinction; for if the caſe be that two men are ſued in Court Chriſtian for ſlander, or for battery, &c., here each of them ſhall have "Attachment on prohibition;" and the reaſon is that they are vexed for a ſeveral matter, &c. Then if they be ſued for ſeveral things, they ſhall have ſeveral actions; but if they be ſued to find a lamp or candle in a church, by reaſon of their land, they ſhall have thereon a joint "Attachment on prohibition;" and ſo the manner of ſuing the Attachment muſt follow the nature of the matter on which they are ſued; for if it be ſeveral, they ſhall have ſeveral actions; and if it be joint, they ſhall have joint actions. As in the caſe of an action of Debt, brought on a bond againſt two, and both deny the deed, and it is found to be the deed of both, here they cannot join in Attaint, but they muſt have ſeveral Attaints, becauſe the matter for which the Attaint lies is ſeveral; for the deed of the one cannot be the deed of the other. But if they had pleaded a releaſe, and the plaintiff had denied the deed, and it had been found that it was not the deed &c., here they ſhall join in an Attaint, becauſe it was a joint iſſue, and a joint plea, and a joint thing, &c. And ſo here; of the principal point they can have ſeveral Attaints rightly, becauſe it is a ſeveral matter; for one may be found guilty, and the other not; and ſo it is a ſeveral matter. But the damages are a joint thing charged on both jointly, and not ſeverally; and they ſhall not thereon have ſeveral Attaints. And alſo an "Audita querela" can ſometimes be brought by all thoſe who are bound jointly; and ſometimes each of them ſingly ſhall have an "Audita querela." As if a ſtatute merchant be made to one by two, and he to whom the ſtatute is made makes a releaſe or defeazance on the ſame ſtatute, and then he to whom the ſtatute is

le Statut eſt fait ſue execution envers ceux qui ſont lies des terres des queux ilz ſont jointenants; icy ils auront un joint "Audita querela" et nemy ſeveral, pur ceo que le tort que eſt fait a eux eſt fait a eux jointment: mes s'il ſue execucion de lour corps, adonque ils auront ſeverals "Audita querela," pur ceo que le tort que l'un ad n'eſt le tort que l'autre ad: et iſſint ſeverals torts, &c. Purque, &c. YELVERTON, a le contrarie entente. . . . . MARKHAM, a meſme l'entente. . . . . ASHTON: Me ſemble le contrarie. . . . . [DANBY, PRISOT, and others follow.] MOILE: Sir, a ma entente il eſt tout un, et nul
f. 22 b. diverſite. PRISOT: Me ſemble le contrarie. . . . . Sir, jeo di que nous entendrons et prendrons que execucion eſt fait accordant a l'execucion ſue, et iſſint puit la Ley melior entendue, ſcavoir de lour biens en common: car le brief dexecucion iſſera vers ambideux jointement: donque accordant a ceo nous entendons que execucion eſt fait: et donque vous ne voiles denir mes que ils covient de joindre en Attaint. Et jeo die que ſi jeo ſuis oblige en un Statut marchant a mon maiſtre **Forteſcue** en certaine ſumme, et ASHTON et jeo ſumus obliges en autre Statut en autre ſumme a mon maiſtre **Forteſcue**; auxi que il recite lez ambideux Statuts coment jeo ſuis oblige, et coment jeo et ASHTON ſumus oblige, veut et grante que ſi nous paions un moindre ſumme, les Statuts ſeront voides, et nous les paions le moindre ſumme, et nient obſtant il ſue execucion d'ambideux Statuts; jeo die que jeo et ASHTON aurons un joint "Audita querela," et nemy ſeveral: . . . . . Et a ceo que ſera mi chief ſi l'autre ne voiet ſuir, pur ceo que le nonſuit l'un ſera le nonſuit d'ambideux; Sir, ceo ne ſera: car s'il ne veut ſuir, il ſera ſevere come en un "Audita querela:" et iſſint ne ſera a nul miſchief; et iſſint me ſemble que le brief porte per l'un des demandants n'eſt bon. **Forteſcue:** A meſme l'entent, car jeo entende que s'ils ne joindront, enſuera grande miſchief, et auxy inconvenience de que l'autre aura Attaint: et s'ils ſoient xx defendants, par tiel reaſon cheſcun d'eux aura Attaint. Et ſi ſera ſuffert y ſera ij ou iij miſchiefs, ſcavoir que le Court ſera enveigle de tant dez actions pur un cauſe, &c. ou un accion purra faire fin de tout &c.; un autre, que la partie, et auxy les jurors del' Petit xij ſera chaſes de reſpondre a ſi pluſors actions pur un cauſe, &c.; un autre, que le Pais ſera trouble et vexe ove ſi pluſors Juries pur un meſme cauſe; que ſont grande miſchief. Et auxi il ſera inconvenient ſi un Attaint ſoit trove contrarie a autre; les queux miſchiefs et inconveniences ſont eſtre eſchewes: donques ſi jeo ſcay prover que ne ſera miſchief ne inconvenience de la contrary part, il ſera plus reaſon de faire eux de joindre en un Attaint, que de ſuffrir eux de ſeverer, &c. Et a ma entente ceo jeo proveray; et adeprimes quant a ceo que eſt dit que s'ils ſeront coartes de joindre et un ne veut ſuir, et le nonſuit d'un ſera le nonſuit d'ambideux, entant que eſt perſonel action; ceo ne ſera pas iſſint; car en tiels caſes ou un tort eſt fait a ij joinment per
f. 23. Ley, come par un recoverie, et ſont compelles de joindre en action a punir meſme le tort,

made sues execution against those who are bound, of the lands of which they are joint tenants; here they shall have a joint "Audita querela," and not several; because the tort which is done to them is done to them jointly. But if he sues execution of their bodies, then they shall have several "Audita querelas," because the tort which one suffers is not the tort which the other suffers; and so there are several torts, &c.; wherefore, &c. YELVERTON: Of the contrary opinion. . . . . MARKHAM: Of the same opinion. . . . . ASHTON: The contrary is my opinion. . . . . [DANBY, PRISOT, and others follow.] MOILE: Sir, in my opinion it is all one, and no difference. PRISOT: I think otherwise. . . . . Sir, I say that we shall understand and hold that execution is made according to the f. 22 b. execution sued, and so may the law be better understood, viz. of their goods in common; for the writ of execution shall issue against both jointly; then, according to that, we understand that execution is done; and then you will not deny that they must join in an Atta'nt. And I say that if I am bound in a Statute Merchant to my master **Fortescue** in a certain sum, and ASHTON and I are bound in another statute in another sum to my master **Fortescue**, and that, reciting both statutes how I am bound and how that I and ASHTON are bound, he wills and grants that if we pay a less sum, the statutes shall be void; and we pay the less sum, and notwithstanding that, he sues execution on both statutes: I say that I and ASHTON shall have a joint "Audita querela," and not several. . . . . And as to there being mischief if the one will not sue, because the nonsuit of the one will be the nonsuit of both; Sir, it will not be so, for if he will not sue, he shall be severed as in an "Audita querela," and so no mischief will arise; and so it seems to me that the writ brought by one of the demandants is not good. **Fortescue**: I agree, for I hold that if they shall not join, great mischief will ensue, and also inconvenience in that the other shall have an Attaint: and if there be twenty defendants, by such reason each of them will have an Attaint. And if it were allowed, there would be two or three mischiefs, that is, that the Court would be entangled in so many actions for one cause, &c., where one action would make an end of all, &c.; also, that the party, and also the jurors of the Petty xij, would be forced to answer to so many actions for one cause, &c.; also, that the Pais would be troubled and vexed by so many juries for one and the same cause; all of which would be great mischiefs. And also it will be inconvenient if one Attaint be found contrary to the other; which mischiefs and inconveniences are to be eschewed. If, then, I can prove that there will not be mischief or inconvenience by the contrary proceeding, there will be more reason to make them join in an Attaint, than to suffer them to sever, &c. And I am of opinion that I shall prove this. And firstly, as to what is said that if they shall be forced to join, and one will not sue, and the nonsuit of the one will be the nonsuit of both, inasmuch as it is a personal action; I say that it shall not be so; for in such cases, where a tort is done to two jointly by law, as by a recovery, and they are compelled to join in action to punish the f. 23.

nient obſtant que action ſoit perſonele le nonſuit l'un ne ſera le nonſuit forſque pur luy meſme, et l'autre ſuira avant : ou ſi l'un releaſſe, il ne ſera barre pur l'autre. Come ſi ij portent "Audita querela," le nonſuit l'un ne ſera le nonſuit forſque pur luy ſole, nient plus ſon releas ne barrera forſque luy meſme, pur ceo que ils ſont coarctes par Ley de joindre, et la cauſe de l'action n'eſt accrue per lour fait, et nul defaut eſt en eux, &c. Meſme la Ley, ſi ij ou iij ſoient condemnes, et en execucion, et ont un releas de le plaintif, et touts ſuent un "Scire facias" envers le plaintif ſur meſme le releas, meſque l'un voile eſtre nonſuit, et ne voile; uncore l'autre ſuira avant. Et meſme la Ley ſera en brief de Debte porte per executorz, et en brief de *Rationibili parte bonorum* porte par ij ; meſque l'un ne veut ſuire, l'autre ſuir avant ; et uncore toutz lez actions ſont merement perſoneles ; mes entant que ils ſont arctes par Ley de joindre, et nul defaut en eux, et la cauſe de l'accion ne accruſt par lour fait mez par le fait de Ley, &c. la Ley eſt favorable pur eux : car ſi l'un ne voit ſuir, l'autre ſuira avant. Et iſſint en ceſt cas le faux ſerment et le Jugement ſur ceo done eſt un tort fait a eux jointment, &c. par la Ley et nient par lour fait, dequel ils covient joindre en Attaint, et meſque l'un ne voit ſuire, l'autre ſuira avant, &c. Mes s'il ſoit iſſint que debte ſoit due a ij par cauſe d'un contract ou obligacion, ou ij jointment ont cauſe a aver action de Treſpas ; en tiel action le nonſuit l'un ſera le nonſuit d'ambideux, ou le releas l'un barrera d'ambideux, pur ceo que fuiſt lour fait et folie que ils prindrent joint eſtat, ou que ils prindrent tiel obligation, &c. Et auxi jeo entende en touts caſes ou ij ou trois ont cauſe d'aver action jointment, que ils ne doivent ſeverer : car a la Comon Ley ſi le tante et la niece uſſent eſte, et le common anceſtre uſt devie, et un eſtrange uſt abate, la tante et la niece ſerroient mis a lour brief de "Droit" pur le joint title que ils avoient, car Ley ne voile ſuffrir eux a ſeverer unques ou ilz point joindre per aſcun voye, &c. Et pur ceo le Statut ordone que ils poient joindre en Aſſiſe de "Mort d'anceſtor" &c. Mes or ſi deux coparceners ſont diſſeiſis et un ad iſſue et devie, la tante et la niece ne purront or joindre : mes ſi ils purront joindre per aſcun meane, ils ſeront coarctes de joindre, &c. et iſſint quant a cele entente ne ſera miſchief de ceſt part, &c. Et ouſtre, quant a ceo que eſt dit que poit eſtre que touts les damages ſont levies des biens celuy qui porte ceſt Attaint, et pur ceo il ſera reaſon de doner a luy un Attaint ſole ; car ſi ſon compagnon ſera nome ove luy, et ils ij ſuiront avant, et le faux ſerment ſoit trove ; or il ſera reſtore, et recover[a] &c. ou il ne perde rien ; le quel eſt dit que il ſera grande inconvence, et grand miſchief a ceſty envers qui l'execution fuit fait ; et Sir, a ma entent il ne ſera pas iſſint : car jeo entende que n'eſt inconvenient que un aura action que ſuppoſe un, et que il recovera autrement. Come en cas ſi deux coparceners ſoient d'un reverſion, et lour tenant a terme de vie fait waſt, et puis un des parceners ad iſſue et devie, et le tenant a terme de vie fait autrefois waſt, et la tante et le niece portent brief de waſt jointment, car ils ne poient ſeverer, et

ſame tort, notwithſtanding that the action is perſonal, the nonſuit of the one ſhall not be a nonſuit except for himſelf, and the other ſhall ſue on; or if one releaſes, it ſhall not be a bar for the other. As if two bring "Audita querela," the nonſuit of one ſhall only be a nonſuit for him ſolely; and neither ſhall his releaſe bar any but himſelf, becauſe they are forced by law to join, and the cauſe of the action has not accrued by their act, and no default is in them, &c. The ſame law holds if two or three are condemned and in execution, and they have a releaſe from the plaintiff, and they all ſue a "Scire facias" againſt the plaintiff on the ſame releaſe, although one wiſhes to be nonſuited and will not ſue, ſtill the other ſhall ſue on. And the ſame law will hold in a writ of "Debt" brought by executors, and in a writ of "Rightful ſhare of goods" brought by two; although one will not ſue, the other ſhall ſue on; and ſtill all the actions are merely perſonal; but inaſmuch as they are forced by law to join, and no default is in them, and the cauſe of the action did not accrue by their act, but by the act of the law, &c., the law is favourable to them; for if one will not ſue, the other ſhall ſue on. And ſo in this caſe the falſe oath and the judgment given thereon is a tort done to them jointly &c., by the law &c., and not by their act; whereon they muſt join in Attaint; and although one will not ſue, the other ſhall ſue on, &c. But if debt be due to two by reaſon of a contract or bond, or if two jointly have cauſe for an action of Treſpaſs, in ſuch action the nonſuit of the one will be the nonſuit of both, or the releaſe of one ſhall bar both; becauſe it was their own act and folly that they took a joint eſtate, or that they took ſuch a bond, &c. And alſo I think that in all caſes where two or three have a cauſe of action jointly, they muſt not ſever; for at Common Law, if there had been aunt and niece, and the common anceſtor had died, and a ſtranger had abated, the aunt and the niece would be put to their writ of "Right," for the joint title which they had; for law will never allow them to ſever where they can in any way join, &c. And, therefore, the ſtatute now ordains that they can join in Aſſize of "Mordanceſtor," &c. But if two coparceners be diſſeiſed, and one has iſſue and dies, the aunt and the niece ſhall not join; but if they can join in any way, they ſhall be forced to join, &c.: and ſo I hold that there will not be miſchief on this point, &c. And beſides, as to what is ſaid that perhaps all the damages are levied on the goods of the one who brings this Attaint, and therefore it will be right to give him an Attaint ſingly, becauſe if his companion ſhould be named with him, and they two ſhould ſue on, and the falſe oath ſhould be found, then he ſhould be reſtored and ſhould recover, &c., whereas he loſes nothing; which is given as an inſtance of the great inconvenience, and great miſchief to the one againſt whom the execution was made; Sir, in my opinion it will not be ſo; for I think that it is not inconvenient that one ſhall have an action which ſuppoſes one thing, and that he ſhall recover otherwiſe. As in a caſe where there are two coparceners of a reverſion, and the tenant for life commits waſte, and then one of the parceners has iſſue and dies, and the tenant for life again commits waſte, and the aunt and niece bring writ of "Waſte" jointly, for they cannot ſever; the writ of

f. 25 b. le brief de waſt eſt general, et uncore lour recoverie ſera ſpecial: car la tante recovera treble damages pur le waſt fait auxibien en la vie ſon parcenér come apres, et la niece ne recovera damage forſque pur le waſt fait apres la mort ſa mere, et le lieu waſte ils recoveront jointment, &c. Et meſme le Ley, ſi homme ad iſſue deux files, et devie ſeiſi de certeine terre, et un eſtranger abate; Et puis une des files ad iſſue ij files, et devie, et la tante et les ij files vont a porter Aſſiſe de "Mort d'anceſtor," icy ſi la tante recovre le moitie de la terre et damage del mort la anceſtre, et les nieces recoverent cheſcune d'eux le moitie de la moitie de la terre, et damages de la mort le mere, uncore le brief eſt general. Et meſme le Ley ſera, ſi trois jointenants ſont, et un de eux releſe a un autre de ſez compagnons, et puis ſont diſſeiſis, et apres ils portent Aſſiſe, un recovera lez ij parts en droit, et l'autre la tierce part accordant, &c., et iſſint en ceſt cas: car il n'eſt inconvenient de faire les ij joindre en Attaint, mes iſſint ſoit que execucion de tout [ſoit] fait d'un: car quand le Grande Jury vient, et ont trove le faux ſerment, le Jugement ſera que reſtitucion ſoit fait accordant a la p rte et greve par matter monſtre a les Juſtices, come ſera en les autres caſes que j'ay mis, et nient acçord a l'uſer de lour action. Et iſſint me ſemble que ſera grande miſchief et inconvenience s'ils ſeront ſufferts aver ſeverals actions de Attaint: et de l'autre part s'ils ſoient coarctes de joindre, ne ſera nul miſchief ne inconvenience; et iſſint me ſemble que ils doivent joindre, &c. MARKHAM: Ouy, Sir, il ſera grand miſchief, et ceo jeo proveray: car s'ils joindront en attaint, et furent a iſſue per covin entre le defendant et le compagnon de celuy or plaintif ne ſera unques plein Enqueſt pris: car ſi le defendant voile challenger un de la Grand Jurie, par aventure par covin le compagnon celuy or plaintif voile challenger meſme le Jurror, il ſera treit; et iſſint ils purront faire de touts, et par tiel voie il ne ſera unques plein Enqueſt; le quel ſera grand miſchief pur celuy or plaintif, &c. **Forteſcue**: Meſme le miſchief pouves mettre en touts caſes ou il y ad ij ou pluſors plaintifs ou demandants, ſcavoir, un dez plaintifs ou demandants, et le defendant ouſtre voille challenger par covin entre eux; jeo di en tiel cas les autrez plaintifs ou demandants peuvoir prier que ſoit enquis le quel ceo challenge ſoit fait par colluſion ou nemy: et ſi ſoit trove que il ſoit fait par colluſion le challenge ſervira de rien, &c., nient obſtant il ſera jure, et iſſint lez parties ne ſeront a nul miſchief: et pur ceo a ma entente il ſera coarct a joindre. Car ſi Aſſiſe ſoit porte vers deux; que traverſent le point de l'Aſſiſe, et un eſt trove diſſeiſor, et l'auter eſt acquite de la diſſeiſin come un, et trove diſſeiſor, et l'autre tenant, &c., or per ceſt ſerment le tenant ad perde ſon terre: donque s'il voile ſuir Attaint entant que ils troverent un diſſeiſor; jeo di que ils doivent porter ceſt Attaint en lour ambideux noms; et uncore un fuit acquite de la [diſ]ſeiſin, mes entant que il ad perde ſon terre, par ceſt Verdit its doivent de joindre en un Attaint pur eſtre reſtore. (*Et vide ſimilem*

Waſte" is general, and ſtill their recovery ſhall be ſpecial; for the aunt recovers treble f. 23 b.
damages for the waſte committed as well in the lifetime of her parcener as afterwards, and the niece ſhall recover only damages for the waſte committed after the death of her mother; and the place waſted they ſhall recover jointly, &c. And the ſame law holds, if a man has iſſue two daughters, and dies ſeiſed of certain land, and a ſtranger abates; and then one of the daughters has iſſue two daughters and dies; and the aunt and two daughters bring an Aſſize of "Mordanceſtor;" here the aunt recovers the moiety of the land and damages from the death of the anceſtor, and the nieces recover each of them the moiety of the moiety of the land, and damages from the death of their mother; ſtill the writ is general. And the law is the ſame if there are three joint tenants, and one of them releaſes to another of his companions, and they are then diſſeiſed, and afterwards they bring an Aſſize; one ſhall recover the two parts in right, and the other the third part, according, &c.: and ſo in this caſe; for it is not inconvenient to make the two join in Attaint, even though execution againſt all be done on one; for when the grand jury come, and they have found the falſe oath, the judgment ſhall be that reſtitution be made according to the loſs and injury, by matter ſhown to the Juſtices, as it ſhall be in the other caſes which I have put, and not according to the uſer of their action. And ſo I think that there will be great miſchief and inconvenience if they ſhall be ſuffered to have ſeveral actions of Attaint: and on the other hand, if they be forced to join, there will be neither miſchief nor inconvenience; and ſo I think that they ought to join, &c. MARKHAM: Yes, Sir, there will be great miſchief, and I will prove it; for if they join in Attaint, and get to an iſſue, by covin between the defendant and the companion of him who is now plaintiff, a full inqueſt will never be got; for if the defendant wiſhes to challenge one of the grand jury, perhaps by covin the companion of him who is now plaintiff wiſhes to challenge the ſame juror, and he ſhall be withdrawn; and ſo they will be able to do with all; and in ſuch way a full inqueſt will never be got, which will be a great miſchief to him who is now plaintiff, &c. **Forteſcue:** You can adduce the ſame miſchief in all caſes where there are two or more plaintiffs or demandants; to wit, [if] one of the plaintiffs or demandants, and the defendant beſides, wiſh to challenge by covin between them; and I ſay that in ſuch caſe the other plaintiff or demandant can pray that inquiry be had whether this challenge be made by colluſion or not: and if it be found that it is made by colluſion, the challenge ſhall avail nothing, &c.; and notwithſtanding he ſhall be ſworn; and ſo the parties will receive no miſchief; and therefore in my opinion he will be forced to join. For if an Aſſize be brought againſt two who traverſe the points of the Aſſize, and one is found diſſeiſor, and the other is acquitted of the diſſeiſin (as if one be found diſſeiſor, and the other tenant, &c.); now by this verdict the tenant has loſt his land, then if he will ſue an Attaint, inaſmuch as they found one diſſeiſor, I ſay that they muſt bring this Attaint in both their names; and ſtill one was acquitted of the diſſeiſin; but inaſmuch as he has loſt his land by this verdict, they ought to join in Attaint ſo as to be reſtored. (See

materiam, An. 8 *E.* 1. *en Attaint, &c. An.* 18 *dicti Regis, en un autre Attaint.*) Et adjournatur. Et puis a un autre jour en Bank le Roy, **Forteſcue** agarda le Attaint ſur le principal point, et abrigea l'aſſignement de le faux ferment quant a les damages, &c.

De Termino Michaelis, Anno XXXV. HEN. VI.

f. 25 b. CHOCKE en l'Eſchequer Chambre devant les Juſtices de l'un Bank et de l'autre, et devant les Barons de l'Eſcheker, coment un informacion fuit fait pur le Roy en l'Eſcheker per un J. Grimeſby, que le Roy a Windſor fuit poſſeſſe de certein Jewels, et monſtra en certein queux, &c., et les queux furent la en le garde d'un J. gardein de les Jewels notre Seignoir le Roy tiel Jour et An, &c., et les queux Jewels tiel Jour et An, &c. apres en Londres en le poſſeſſion del Simon Eier devindrent: ſur que iſſiſt proces vers le dit S. E. de reſpondre a ceſt informacion: ſur que il vient eins et dit, que la Citie de Londres eſt un anciene City, et ad eſte de temps, &c., deins que le City il y ad tiel cuſtome, et ad ew de temps dont memory ne court, ſcavoir que ſi aſcun home met aſcun biens en plege pu aſcun duty (*cujuſcunque fuerint*), celuy a qui tielx biens ſont mis en plege les gardera tanque il ſoit paie e ſatisfie de ſon duty, pur que les biens ſont mis en plege: et dit ouſtre, que un T. Ship. fuit poſſeſſe de meſmes les Jewels a de Londres, et le dit T. meſme le jour que il ſuppoſe que les biens devindrent en noſtrez mainz a Londres appromptes de le dit Simon Eier lx. livres, a paier, &c., et delivra les dits Jewels a le dit Simon en plege pur meſme le ſomme, &c., ſans ceo que les dits Jewels devindrent en les mains le dit Simon en aſcun autre mannere: et auxi dit ouſter, que le ſomme a luy n'eſt uncore paie, &c., la quel mattere, &c., et demanda Jugement, ſi les dits Jewels doit il deliverer nient ſatisfie et paie, &c. Et dit ouſter per proteſtacion que il ne conuſt que le property de meſmes les Jewels fuit en le Roy: et auxi que les dits Jewels ne furent ſignes ove aſcun print ou armez noſtre Signior le Roy, &c., ſur que le Roy ad demurre en Jugement, que ceſt ple n'eſt pas ſuffiſant, &c. Et ſir, me ſemble que il n'eſt pas ſuffiſant car cele matter quel il ad plede pur cuſtome ne giſſe en cuſtome: car il ne purra aver bon commencement: et auxi il ne puit eſtre ove reaſon; car il allege le cuſtome, que ſi aſcun met aſcuns biens en plege *cujuſcunque fuerint*, les gardera tanque, &c., donques ſi ceo cuſtome ſera bon, jeo purrai mettre touts les biens de monmaiſtre **Forteſcue**, meſque jeo n'avois eux en mon poſſeſſion car il ad allege le cuſtome general, et n'ad my parle de tiels biens queux il ad en ſa poſſeſſion, et iſſint tout encontre reaſon, et meſque ſera entendu de tielx biens que il ad en ſa poſſeſſion, uncore le cuſtome ne poit eſtre ove reaſon, que home metra lez bienz d'un autre en plege, mes un deviſe poit bien giſer en cuſtome, pur ceo que eſtoit ove reaſon, entant que il purra aver aliene devant, et
f. 26. n'eſt en prejudice de nul autre, &c., mes ſi un cuſtome ſoit, que home purra deviſer ſa terre

similar matter, 8 Ed. I., in Attaint, &c.; 18 of the same King in another Attaint). —Adjourned. And then on another day in the King's Bench, **Fortescue** awarded the Attaint on the principal point, and abridged the assignment of the false oath, as to the damages, &c.

Michaelmas Term, 35 Hen. VI.

Chock rehearsed in the Exchequer Chamber, before the Justices of both Benches, and f. 25 b.
before the Barons of the Exchequer, how an information was made for the King in the Exchequer by one J. Grimesby, that the King was possessed at Windsor of certain jewels (and he specified them &c.), and which were there in the ward of one J., keeper of the jewels of our Lord the King, such a day and such a year, &c.; and which jewels, on such day and year &c., came afterwards, in London, into the possession of Simon Eier; whereupon issued process against the said S. E., to answer to this information; whereupon he came and said, that the City of London is an ancient city, and has been from time &c., in which city the custom is, and has been, from time of which the memory runneth not, that if any man puts any goods in pledge for any duty (whosesoever the goods may be), he to whom such goods are pledged, shall keep them until he be payed and satisfied of his duty for which the goods were pledged; and he said further, that one T. Ship. was possessed of the same jewels at London; and the said T., on the same day that he supposes that the goods came into our possession at London, borrowed of the said Simon Eier 60*l.*, to be paid &c., and delivered the said jewels to the said Simon, in pledge for the same sum &c., without this, that the said jewels came into the hands of the said Simon in any other manner. Also he said further, that the sum is not yet paid to him, &c., which matter &c.: and he prayed judgment whether he ought to deliver the said jewels without being satisfied and paid, &c. And he said further, by protestation, that he did not know that the property of the same jewels was in the King; and also that the said jewels were not marked with any print or arms of our lord the King, &c. Whereupon the King has demurred, in judgment, that this plea is not sufficient, &c. And, Sir, it seems to me that it is not sufficient, for the matter which he has pleaded for custom does not lie in custom, for it will not be able to have a good beginning: and also it cannot stand with reason; for he alleges the custom, that if any one place any goods in pledge, "whosesoever the goods may be," he shall keep them until, &c. Then, if this custom is good, I shall be able to put [in pledge] all the goods of my master **Fortescue**, although I never had them in my possession; for he has alleged the custom generally, and has not spoken of such goods as he has in his possession; and so it is entirely against reason; and although it be understood as of such goods as he has in his possession, still the custom cannot stand to reason, that a man shall put the goods of another in pledge; but a devise can well lie in custom, because it is consistent with reason; inasmuch as he might have alienated before, and it is not to the prejudice of any other person, &c. But if there be a f. 26.

taille, ou tiel terre que il ad forſque pur terme de ſa vie, ou que le tenant a terme d'ans purra deviſer; tiel cuſtome ne ſera rien a purpos, pur ceo que il eſt encontre reaſon, et prejudice de ceux en le reverſion. Iſſint eſt le cuſtome icy en prejudice ceux a que le property eſt de tielx biens; iſſint le cuſtome n'eſt pas bon, &c., et meſque le cuſtome ſoit bon uncore le Roy ne ſera lie per ceo. Car ſi home voile preſcriber aver tolle deins certein lieu de cheſcun home qui la vient, &c., meſque le Roy vient illonque il ne paiera, &c. Et auxi meſme la Ley veut eſtre de pontage, &c. Et auxi ſi le Roy ad droit a un Egliſe, et un eſtranger preſente, et ſon Clerk eſt inſtitute, et inducte, et les vj mois paſſes; uncore le Roy ne ſera dit hors de poſſeſſion, mes il preſente a meſme l'Egliſe apres aſſez bien; *quia nullum tempus occurrit Regi;* iſſint me ſemble en ceo cas, meſque le cuſtome ſoit bon entre comens perſones uncore il ne liera le Roy. Et iſſint a ma entente le ple n'eſt pas bon, &c. BILLING: A l' contrary. . . . . [HENGESTON, LAICON, and others follow.]

f. 28 b. DANBY, a meſme l'entent: Sir jeo entende que ceſt cuſtome n'eſt bon: car eſt overtement encontre reaſon, et ne puit giſer en cuſtome. Car jeo poſe que le cuſtome uſt eſte allege en ceo maner, come ſi aſcun mettra les biens d'un eſtranger en plege, celuy a qui, &c., les gardera; ſera ceo bon cuſtome? Jeo die que non: nient plus icy, car il ne purra aver bon commencement. Et a ceo que eſt dit que puit eſtre que eſt devant temps del memory le Roy grante per autorite, &c., que ceux de Londres auront tiel cuſtome, &c., et per tant le cuſtome ſera bon; Sir jeo di que ceo ne ſera iſſint entendu; car ſi il aver tiel commencement, covient a vous aver monſtre en voſtre ple coment devant temps, &c., le Roy grante, &c., et coment tout temps puis ad eſte continue, ou autrement le cuſtome ne puit eſtre bon. (*Ad quod conceſſerunt* **Forteſcue**, PRISOT, et HALTOST.) Iſſint me ſemble que le ple

f. 29. n'eſt pas bon, &c. . . . . ARDEN (Chief Baron), a meſme l'entent, et que ceſt cuſtome n'eſt pas bon. Car jeo entende per meſme le reaſon que un purra

f. 29 b. per ceo cuſtome mettre mes biens en plege ſur condicion de payement d'un ſomme d'argent, par meſme le reaſon il purra les mettre en plege, a performer aſcun autre condition: donque jeo poſe que les biens uſent eſte delivres a le dit defendant ſur condicion, que celuy qui les mit en plege enfeffe le dit defendant de ſon manoir de Dale; donque paraventure il ne voile luy enfeoffer: donque per ces means le Roy perdra ſes biens maugre ſien, &c., et n'aura nul remedy: car les biens ſont mis en plege ſur tiel condition, que le Roy ne puit performer: car il ne puit luy enfeoffer, et auxibien purra il mettre en plege ſur l'un condition come ſur l'auter, ſi le cuſtome ſoit bon: le quel n'eſt a ma entente, &c. A autre entente le cuſtome n'eſt bon: car jeo entende que Ley ne veut ſuffrir que un purra charger mes biens, ou les biens d'aſcun autre, nient plus, que un purra charger la terre d'un autre. Car jeo poſe que deux joint [tenants] ſont, et un charge, meſque les beſtes de ſon compagnon allant ſur la terre; uncore celuy a qui le charge ſe fiſt,

cuſtom, that one ſhall be able to deviſe his entailed lands, or ſuch lands as he has only for f. 26.
the term of his life, or that the tenant for a term of years may deviſe, ſuch cuſtom will not hold good, becauſe it is contrary to reaſon, and to the prejudice of thoſe in reverſion. So is the cuſtom here in prejudice of thoſe in whom the property of ſuch goods lies: ſo the cuſtom is not good, &c. And although the cuſtom were good, ſtill the King will not be bound by it. For if one will preſcribe to have a toll in a certain place, from each man who comes there, &c., although the King comes there, he ſhall not pay, &c. And alſo the ſame law holds of pontage, &c. And alſo if the King has right to a church, and a ſtranger preſents, and his clerk is inſtituted and inducted, and the ſix months paſs, ſtill the King ſhall not be ſaid to be out of poſſeſſion, but he ſhall afterwards preſent to the ſame church with perfect right; becauſe *nullum tempus occurrit Regi;* ſo it ſeems to me in this caſe, although the cuſtom is good between common perſons, ſtill it ſhall not bind the King. And ſo in my opinion the plea is not good. Billing: I think otherwiſe. . . . . [Hengeston, Laicon, and others follow.] Danby, to the ſame purport: Sir, I hold that this cuſtom is f. 28 b.
not good, for it is openly againſt reaſon, and cannot lie in cuſtom. For I put the caſe that the cuſtom had been alleged in this manner: If any one ſhall put the goods of a ſtranger in pledge, he to whom &c. ſhall keep them, ſhall this be a good cuſtom? I ſay no; and no more here, for it cannot have a good beginning. And as to what is ſaid, that perhaps it was before time of memory that the King granted by authority, &c., that they of London ſhould have ſuch cuſtom, &c., and that therefore the cuſtom ſhall be good; Sir, I ſay that it ſhall not be taken ſo; for if it had ſuch beginning, you ought to have ſhown in your plea how before time &c., the King granted &c., and how it had ever ſince continued; or otherwiſe the cuſtom cannot be good. (To which Forteſcue, Priſot, and Haltoft agreed.) So I hold that the plea is not good, &c. . . . . Arden (Chief Baron), to the ſame purport, and that this cuſtom is not good. For I think that by f. 29.
the ſame reaſon that one would be able by this cuſtom to put my goods in pledge on condition of payment of a ſum of money, by that ſame reaſon he would be able to put f. 29 b.
them in pledge for the performance of any other condition. Then ſuppoſe that the goods had been delivered to the ſaid defendant on condition that he who put them in pledge ſhould enfeoff the ſaid defendant of his manor of Dale; then perhaps he would not enfeoff him; then by theſe means the King would loſe his goods in ſpite of himſelf, &c., and would have no remedy; for the goods are pledged on a condition which the King cannot perform; for he cannot enfeoff him; and he will be able to pledge as well on the one condition as on the other, if the cuſtom is good; which it is not, in my opinion, &c. In another way the cuſtom is not good; for I hold that the law will not allow that one ſhall be able to charge my goods, or the goods of any other, any more than that one ſhall be able to charge the land of another. For let me ſuppoſe that there are two joint tenants, and that one of them charge the land, although the beaſts of his companion go on the land, ſtill he to whom

ne puit diſtraindre per ceux beſtes; entant que il eſt encontere reaſon que un chargera autres biens, ou terres, &c., donques icy ceſt cuſtome eſt general, ſcavoir, *bona ſeu catalla cujuſcunque fuerint*, eſt expreſſement encontre reaſon: et pur ceo a ma entente il ne puit giſer en cuſtome; et meſque il purra, uncore le Roy ne ſera lie per ceo; iſſint le ple n'eſt bon, &c. **Forteſcue**, a meſme l'entente: Et a ceo que eſt dit, que ſi mes biens ſoient embles per un que les vende en marche overte, le propertie n'eſt pas altere ſinon s'il paie tolle pur ceo, &c. Sir, jeo grante bien que ceo eſt Ley, et s'il ne paie tolle, jeo purra eux ſeiſir apres: et iſſint eſt tenu en noſtres livers; et uncore ceux de Londres claime de aver overt marche en cheſcun ſhop le quel Dieu defende: car ſoit iſſint cheſcun purra acheter en lour ſhops privement biens embles; iſſint que le party n'aura unque temps de prendre ſes biens ou les claimer; et iſſint ſera ſans remedy; le quel ſera grand miſchief: donque icy ceo cuſtome et merement encontre reaſon, et iſſint ne puit giſer en cuſtome; et meſque il purra, uncore il ne liera le Roy: car Roy ſera de melior condition que aſcun autre perſon en tiels caſes. Mes en feſant de ſon teſtament il eſt pire que un autre perſon: car il ne donera rien ſinon ceo que il ad en ſon poſſeſſion et auxi ne puit deviſer nul terre per ſon teſtament, &c. Et ouſtre come ad eſte dit, ſi un home voile preſcriber aver tolle, uncore le Roy ne paiera tolle. Et Sir, a ma entent pur un mannere de tolle nul home puit preſcriber de ceo aver come pur "throughe" tolle, mes pur tolle travers on puit aſſez bien preſcriber; et iſſint diverſite. Et ſi un doit paier pontage a un autre meſque le Roy luy pardone de pontage; uncore il paiera pur le reparation de le pont, &c. Prisot: Ouy Sir, le Roy puit preſcriber pur "throughe" tolle: car puit eſtre que le chemin fuit la ordeine per cauſe de tolle. **Forteſcue**: Sir, jeo croy que non; mes nul autre preſcribera. Purque, &c. Et puis Haltost en l'Eſcheker agrea que le Roy ſera reſtore a ſes Jewels. Et ouſtre Sir, agarde un Capias envers le defendant, &c., car *bona*, &c.

De Termino Hillarii, Anno xxxv. Hen. VI.

f. 45 b. Aſſiſe de "Novel diſſeiſin" fuit porte en Bank le Roy des terres en le County de Midd. envers un, qui dit, Aſſiſe ne doit eſtre: car il dit que un J. K. fuit ſeiſi de meſmes les tenements or mis en view, &c., en ſon demeſne come de fee, et en enfeoffe un J. T. a aver et tenir a luy et a ſes heirs a tousjours, per force de quel il fuit en ſeiſi en ſon demeſne come de fee, et iſſint ſeiſi donna meſmes les tenements a un R. G. et A. ſa feme, et a les heirs de lour ij corps engendres, per force de quel ils furent ſeiſis en lour demeſne come de fee [taile], et avoient iſſue, or le dit tenant, et puis le pere devy, et la feme ſurveſquiſt, et devia; apres qui mort les dits tenements deſcenderent a le tenant come a fits et heir de le corps le dit R. et A. engendres, per force de quel il entra et fuit ſeiſi en ſon demeſne come de fee tail per la forme de le done avandit; et le plaintif enclaimant meſmes les tenements per colour

the charge is made cannot diſtrain thoſe beaſts; inaſmuch as it is againſt reaſon that one ſhall charge another's goods or lands, &c.; then here this cuſtom is general, that is, "the goods and chattels of any one ſoever," which is expreſsly againſt reaſon; and therefore, in my opinion, it cannot lie in cuſtom; and even though it did, ſtill the King ſhall not be bound thereby: ſo the plea is not good, &c. **Forteſcue,** to the ſame purport: And as to what is ſaid, that if my goods be ſtolen by one who ſells them in market overt, the property is not altered except he pay toll therefore, &c. Sir, I agree that this is law, and if he pay no toll, I ſhall be able to ſeize them afterwards: and ſo it is held in our books; and ſtill they of London claim to have market overt in every ſhop, which God forbid; for if it were ſo, every one may buy in their ſhops, privately, ſtolen goods; ſo that the party ſhall never have time to take his goods or claim them, and ſo ſhall be without remedy, which will be a great miſchief. Then here this cuſtom is ſimply againſt reaſon, and ſo cannot lie in cuſtom; and even if it could, ſtill it would not bind the King: for the King ſhall be of better condition than any other perſon in ſuch caſes. But in making his teſtament, he is worſe off than any other perſon: for he can give nothing except what he has in his own poſſeſſion; and alſo he cannot deviſe any land by his teſtament, &c. And beſides, as has been ſaid, if a man will preſcribe to have a toll, ſtill the King ſhall not pay toll. And, Sir, in my opinion, for one kind of toll no man can preſcribe, namely, for "toll through;" but for "toll traverſe" one can well preſcribe; and ſo there is a difference. And if one ought to pay pontage to another, although the King pardon him of pontage, ſtill he ſhall pay for the repair of the bridge, &c. Prisot: Yes, Sir, the King can preſcribe for "through" toll: for it may be that the road was made there becauſe of the toll. **Forteſcue:** Sir, I believe not; but no other ſhall preſcribe. Wherefore, &c. And then Haltoft, in the Exchequer, agreed that the King ſhould have his jewels reſtored. And further, a "Capias" was awarded againſt the defendant, &c., becauſe "goods," &c.

Hilary Term, 35 Hen. VI.

An Aſſize of "Novel Diſſeiſin" was brought in the King's Bench, for lands in the county f. 45 b.
of Middleſex, againſt one, who ſaid that there ought not to be an Aſſize; for he ſaid that one J. K. was ſeiſed of the ſame tenements now put in view, &c., in his demeſne as of fee, and thereof enfeoffed one J. T., to have and to hold to him and his heirs for ever; by force of which he was ſeiſed thereof in his demeſne as of fee; and being ſo ſeiſed, he granted the ſame tenements to one R. G., and A. his wife, and to the heirs of their two bodies begotten, by force of which they were ſeiſed in their demeſne as of fee tail, and had iſſue the ſaid tenant; and then the father died, and the wife ſurvived and died; after whoſe death the ſaid tenements deſcended to the tenant as the ſon and heir of the bodies of the ſaid R. and A. begotten; by force of which he entered and was ſeiſed in his demeſne as of fee tail, by the form of the gift aforeſaid; and that the plaintiff claiming the ſame tenements by colour of

d'un fait de leas fait a luy pur terme de ſa vie per l'avandit J. K. devant le feoffement fait al dit J. T. ou rien paſſa, entra; ſur que un John A. Down entra; ſur que le tenant entra; le quel matter &c. Et demanda Jugement, ſi Aſſiſe &c. A que le plaintif dit par proteſtation, que il ne conuſt rien que il dit; pur ple il dit que un J. F. ſon pere fuit ſeiſi de meſmes les tenements en ſon demeſne come de fee, et de tiel eſtat mouruſt ſeiſi; apres qui mort le dit plaintif come fits et heire a luy entra en meſmes les tenements, et en fuit ſeiſi en ſon demeſne come de fee tanque par le tenant diſſeiſi, &c., le quel matter &c. Et demanda Jugement; et pria l'Aſſiſe, &c. A que le tenant dit, que long temps devant que le dit J. F. pere le plaintif, rien avoit en meſmes les tenements, l'avandit J. T. fuit ſeiſi de meſmes les tenementz en ſon demeſne come de fee par feffement, &c., come devant et iſſint en ſeiſi devant que le pere le plaintif rien en avoit, donna, memes les tenements a l'avandit R. G. et A. ſa femme come devant, &c., par force de quel ils furent en ſeiſis le dit R. G. leſſa memes les tenements a un P. R. de H. a aver et tenir a volonte, par force de quel il fuit en poſſeſſe, et iſſint poſſeſſe de meſmes les tenements enfeoffa le pere le plaintif, a aver et tenir a luy et a ſes heirs a toujours; per force de quel il fuit en ſeiſi en ſon demeſne come de fee, et iſſint ſeiſi devia ſeiſi vivant les dites R. et ſa feme; apres qui mort le dit plaintif come fits et heir a luy entra, et fuit ſeiſi en ſon demeſne come de fee; et puis le dit R. G. devia, et le dit A. ſa feme luy ſurveſquiſt, et devia; apres qui mort le tenant come fits et heir a's dits R. et A. entra, &c., la quel mattere &c. et pria que le plaintif ſoit barre, &c. A que le plaintif dit que le pere le tenant fuit ſeiſi le meſmes les tenements en ſon demeſne come de fée, et en enfeoffa, le pere le plaintiff, a aver et tenir a luy et a ſes heirs a toujours; per force de quel il fuit en ſeiſi en ſon demeſne come de fée, et iſſint en
f 46. ſeiſi devie ſeiſi; apres qui mort le plaintif come fits et heir entra, et en fuit ſeiſi en ſon demeſne come de fée, et iſſint ſeiſi tanque per le tenant diſſeiſi. Sans ceo que le dit P. R. enfeoffe le pere le plaintif en le maner come il ad ſuppoſe, &c., le quel mattere &c. Et pria Aſſiſe, &c. WANGFORD: Sir, me ſemble que ceſte reſponſe n'ſt bon, entant que il ne monſtre que le pere le tenant enfeoffa le pere le plaintif devant le done en tail ou apres, &c. **Fortescue:** Sir, ceo n'eſt rien a propos; car il ad traverſe le feoffment fait par le tenant a volonte. Et puis le tenant change ſon replicacion, et weiva le leas fait a la volonte, et le feoffment fait per le tenant a la volonte, et dit que ſon pere et ſa mere furent ſeiſis come devant par force de le tail tanque diſſeiſis par le pere le plaintif, et tout ouſtre come devant, &c. A que le plaintif dit, que le pere le tenant fuit ſeiſii en ſon demeſne come de fée, et enfeoffa le pere le plaintif en fée, par force de quel il fuit ſeiſi, et devie ſeiſi, et le plaintif come fits et heir a luy entra, et fuit ſeiſi tanque per le tenant diſſeiſi; Sans ceo que le pere

a deed of leaſe made to him by the aforeſaid J. K. before the feoffment made to the ſaid J. T., where nothing paſſed, and entered; whereupon one John Adowne entered; whereupon the tenant entered; which matter &c. And he prayed judgment whether an Aſſize &c. To which the plaintiff ſaid, by proteſtation, that he did not admit anything that he has ſaid; and for plea, he ſaid that one J. F., his father, was ſeiſed of the ſame tenements in his demeſne, as of fee, and of ſuch eſtate died ſeiſed; and that after his death he, the ſaid plaintiff, as his ſon and heir, entered on the ſame tenements, and was ſeiſed thereof in his demeſne as of fee, until diſſeiſed by the tenant, &c., which matter &c. And he prayed judgment; and prayed the Aſſize, &c. To which the tenant ſaid that, long before the ſaid J. F., father of the plaintiff, had anything in the ſame tenements, the aforeſaid J. T. was ſeiſed of the ſame tenements in his demeſne as of fee by feoffment, &c., as before, and ſo was ſeiſed thereof before the father of the plaintiff had anything therein, and gave the ſame tenements to the aforeſaid R. G., and A. his wife, as before, &c.; by force of which they were ſeiſed, and the ſaid R G. leaſed the ſame tenements to one P. R. of H., to have and to hold at will, by force of which he was thereof poſſeſſed, and being ſo poſſeſſed of the ſame tenements, he enfeoffed the father of the plaintiff, to have and to hold to him and his heirs for ever; by force of which he was ſeiſed in his demeſne as of fee, and being ſo ſeiſed, died ſeiſed in the lifetime of the ſaid R. and his wife; after whoſe death the ſaid plaintiff entered as ſon and heir, and was ſeiſed in his demeſne as of fee; and then the ſaid R. G. died, and the ſaid A., his wife, ſurvived him, and died; and after their deaths the tenant, as ſon and heir to the ſaid R. and A., entered, &c., which matter &c.; and he prayed that the plaintiff might be barred, &c. Whereunto the plaintiff ſaid that the father of the tenant was ſeiſed of the ſame tenements in his demeſne as of fee; and thereof enfeoffed the father of the plaintiff, to have and to hold to him and his heirs for ever; by force of which he was ſeiſed thereof in his demeſne as of fee; and, being ſo ſeiſed thereof, died ſeiſed; after whoſe death the f. 4t. plaintiff, as ſon and heir, entered, and was thereof ſeiſed in his demeſne as of fee, and was ſo ſeiſed until diſſeiſed by the tenant, without this, that the ſaid P. R. enfeoffed the father of the plaintiff in the manner as he has ſuppoſed, &c., which matter &c. And he prayed the Aſſize, &c. WANGFORD: Sir, it ſeems to me that this anſwer is not good, inaſmuch as he does not ſhow that the father of the tenant enfeoffed the father of the plaintiff before the gift in tail, or after it, &c. **Forteſcue**: Sir, this is not to the purpoſe; for he has traverſed the feoffment made by the tenant at will.—And then the tenant changed his replication, and waived the leaſe made at will, and the feoffment made by the tenant at will; and ſaid that his father and mother were ſeiſed, as before, by force of the entail, until diſſeiſed by the father of the plaintiff (and ſo on throughout as before, &c.) Whereto the plaintiff ſaid that the father of the tenant was ſeiſed in his demeſne as of fee, and enfeoffed the father of the plaintiff in fee, by force of which he was ſeiſed, and died ſeiſed; and the plaintiff, as ſon and heir to him, entered, and was ſeiſed, until diſſeiſed by the tenant; without this, that

le plaintif diſſeiſiſt le pere et le mere le tenant, come il ad ſuppoſe. Et pria l'Aſſiſe. Et le tenant dit que il diſſeiſiſt. Preſt, &c. Et ſur ceo les parties prierent l'Aſſiſe. Et ſur ceo les Juſtices diſoient que ils veulent eſtre adviſes que l'Aſſiſe ſera agarde ſur ceſt iſſue, ou en point d'Aſſiſe, pur ceo que ils ſemble que le replicacion n'eſt bon. Et fuit dit per **Fortescue**, que ſi un home en Aſſiſe plede en barre, le quel ple eſt bon barre, et le plaintif face title que n'eſt bon, et le tenant traverſe ceo; uncore l'Aſſiſe ne ſera agarde; mes ſi le barre ne ſoit bon, l'Aſſiſe ſera agarde en point d'Aſſiſe, et nemy ſur le title; et iſſint ſera ſi le barre ſoit bon, et le title bon, et le replicacion nient bon, come le cas eſt icy, &c.

En Attaint en Bank le Roy le Grande Jury apparuſt, et un de la Grande Jury challengea luy meſme, entant que ſon [ſes?] anceſtres uſſent eſte Baronnets, et Seigniors de Parliament, et que ils ont eu lour place en meſme le Meaſon de le Parliament. Et ceſt matter fuit trove par vj triors de meſme le Jury: purque il pria allowance de ceſt challenge, et que il purroit aller a Dieu, &c. **Fortescue**: Nous ne poimus ceo allower ſans brief teſtifiant ceo; car nous devons eſtre aſſerte par matter de record de voſtre challenge, ou autrement ne poimus ceo allower. *Ad quod Tota Curia conceſſit.* Et puis il fuit trait pur autre cauſe, &c.

De Termino Hillarii, A°. xxxv. Hen. VI.

f. 52. Littleton vient en l'Eſcheker devant les Juſtices de l'un Bank et de l'autre, et reherce coment E. de Englethre chevalier tenoit de Roy certeine terre en chief per ſervice de Chevalier, et avoit iſſue une fille, et devia ſeiſi, ſa fille a le temps de ſon mourrant eſtant de lage de xv ans; en quel cas a noſtre entente ele ſera en le garde notre Seignior le Roy; et pur ceo que puis la mort le pere ele ad mariee luy meſme ſans licence du roy, nous prions pur le roy que ele puit faire fine. Come ſi le tenant le Roy aliene ſans licence, il ſera fine pur ceo que le roy covient per matter de recorde eſter aſſert de ſon tenant. Iſſint eſt quand ele priſt baron, ſi ils ont iſſue, adonque eſt le baron tenant au Roy, et ſera homage, et avowera ſur luy, et iſſint il amonte a tant come une alienacion; en quel cas ele ſera fine: et iſſint ſera icy, &c. **Fortescue**: Non Sir, car jeo croy que ele ne ſera fine: car n'eſt ſemble quand le widow le Roy marie luy meſme ſans licence, car ſur l'aſſignement de ſon dower ele ſera ſerment en Chancellerie que il ne luy marie ſans licence, et pur ceo, s'il fait contrarie al ſon ſerment, ele ſera fine: mes il n'eſt iſſint d'un heir, car quand un heir female ſue livere en Chancery a ſon plein age, ele ne ſera tiel ſerment, et pur ceo a ma entent ele ne ſera fine: et pur ceo il eſt meliour que vous diſputes primes le quel ele ſera en gard ou
f. 52 b. nemy, &c. [Choke, Wangford, and others follow.] Les Clerks de Rolles diſent que

the father of the plaintiff diſſeiſed the father and mother of the tenant, as he has ſuppoſed. And he prayed the Aſſize. And the tenant ſaid that he diſſeiſed; ready, &c. And thereupon the parties prayed the Aſſize. And thereupon the Juſtices ſaid, that they would conſider whether the Aſſize ſhould be awarded on this iſſue, or on the point of the Aſſize, becauſe it ſeemed that the replication was not good. And it was ſaid by **Forteſcue**, that if a man in an Aſſize pleads in bar a plea which is a good bar, and the plaintiff makes a title which is not good, and the tenant traverſes it, ſtill the Aſſize ſhall not be awarded; but if the bar be not good, the Aſſize ſhall be awarded on the point of the Aſſize, and not on the title; and ſo it ſhall be if the bar is good, and the title good, and the replication not good, as is the caſe here, &c.

In an "Attaint" in the King's Bench, the Grand Jury appeared, and one of the Grand Jury challenged himſelf, inaſmuch as his anceſtors had been baronets, and lords of Parliament, and as they have had their place in the ſame houſe of Parliament. And this matter was found by ſix triers of the ſame Jury; wherefore he prayed allowance of that challenge, and that he might be bidden adieu, &c. **Forteſcue:** We cannot allow this without a writ teſtifying it; for we ought to be certified, by matter of record, of your challenge; or otherwiſe we cannot allow it. To which all the Court aſſented. And then he was withdrawn for another reaſon.

Hilary Term, 35 Hen. VI.

Littleton came into the Exchequer before the Juſtices of both the Benches, and f. 52.
rehearſed how E. de Englethre, knight, held certain land of the King in chief by knight's ſervice, and had iſſue a daughter, and died ſeiſed, his daughter at the time of his deceaſe being of the age of fifteen years; in which caſe, in our opinion, ſhe will be in the ward of our Lord the King; and becauſe, ſince the death of her father, ſhe has married without the King's licence, we pray for the King that ſhe pay a fine; as when the King's tenant alienates without licence, he ſhall pay a fine, becauſe the King ought, by matter of record, to be certified of his tenant. So it is, when ſhe takes a huſband; if they have children, then the huſband is the King's tenant, and ſhall do homage, and avowry ſhall be made upon him; and ſo it comes to the ſame thing as an alienation; in which caſe ſhe would pay a fine: and ſo it ſhall be here, &c. **Forteſcue:** Not ſo, Sir; for I think that ſhe ſhall not pay a fine; for it is not as when one of the King's widows marries without licence; for on the aſſignment of her dower, ſhe ſhall make oath in Chancery that ſhe will not marry without licence, and therefore if ſhe does contrary to her oath, ſhe ſhall pay a fine: but it is not ſo of an heir; for when an heir female ſues livery in the Court of Chancery at her full age, ſhe ſhall make no ſuch oath, and ſo in my opinion ſhe ſhall not pay a fine. Therefore it is better that you firſt debate whether ſhe ſhall be in ward or not. [Choke, Wangford, and

lour cours en Chancery ſi un tient certeine terre de Roy en ſocage, et ad iſſue fille, et devie, ſi ele ſue livere deins l'age de xiv ans, ele aura *una cum exitus:* mes ſi ele ſue livere apres xiv ans, ele n'aura livere *una cum exitus*, mes ſolement livere, &c. **Forteſcue:** A ma entente voſtre cours en tiel cas eſt mal, et encontre Ley: car a ma conceit ele aura livere *una cum exitus* en l'un cas et en l'autre, pur ceo que ele eſt ajuge deins age juſque xx ans a faire aſcun choſe que ſera prejudice a luy, ſcavoir a faire feoffment, obligation, ou autre contract, ou aſcun tiel ſemble, &c. PRISOT: Me ſemble que ele ne ſera en garde; car a ma conceit l'age de le male et de la female ne fuit tout un a la Comon Ley. Et ceo prove bien le Statut de Magna Carta; que meſque ceſt Statut ſoit general en Ley coment[1] uncore le concluſion de meſme l'eſtatut prove que ne puit eſtre entendu des heirs females,
f. 53. mes ſolement des heirs males: &c. &c. . . . . Et ASHTON, MARKHAM, DANVERS, BINGHAM, DANBY et MOILE furent de meſme l'opinion, &c. **Forteſcue:** A le contrary. Et ou eſt dit que le Statut de Magna Carta ne poit eſtre entendu des heires females per cauſe de la concluſion de meſme le Statut, &c. ceo n'eſt pas iſſint: car meſque un Statut ſoit general, uncore ſera pris come la Ley puit entendre, et en nul autre mannere. Car il y ad un Statut que veut, *quod poſtquam aliquis poſuerit in aliquam Inquiſicionem ad primum diem allocetur ei eſſonium*, &c.; le quel Statut eſt general, et uncore ſera pris come la Ley puit eſtre entendu, et nient autrement; car ſi on vient eins per "Exigent," ou per "Cepi Corpus," et joine a l'iſſue, uncore il ne ſera eſſonie, entant que il demeure en garde ou per mainpriſe; et uncore eſtatut eſt general: iſſint icy, le Statut de Magna Carta eſt general, et ſera entendu des heirs males et females come la Ley entendra: donque le derraine concluſion refere al heire male ſolement, le primes de meſme le Statut ſera entendu auxibien des females come heires males. Et auxi le proviſion de Merton, qui commence *de herede, cum ſit de xiv annorum et ultra*, et ceo prove que l'age del heire male et de female diſmarie a la Comon Ley fuit tout un: car le dit Statut ne fait aſcun forſpris mes en general, ſcavoir de heire, &c. le quel eſt ſi bien female come male. Et a ceo qu'eſt dit
f. 53 b. que le Statut de Merton, *de diſparagatione* prove divers ages de aſſenter a matrimoine enter male et female, ceo n'eſt pas iſſint a ma entente: car n'eſt forſque un age de l'aſſente a matrimoine en noſtre Ley, et ceo eſt a xiv ans, et donq eſt *matrimonium conſummatum*, et devant il eſt *matrimonium conſumptum*, &c. Et ceo ſera prove per le Statut de Merton, qui commence *de heredibus per parentes contra pacem vi abductis*, &c. le quel Statut done remedy pur le Seignior envers le raviſour, et cele remedy eſt done *de herede infra xiv annos exiſtente*, &c. et cele Statut eſt auxi general, et eſt auxibien des heires females comme des heirs males, et *e contra*. Donque ſi un ſoit poſſeſſe d'un garde de feme deins l'age de xiv ans, et ſoit ravie apres xij ans, et devant xiv ans, le raviſſeur luy marie, et le Seignior porte brief de "Raviſh-

[1] This ſeems to be a miſtake for *le commencement*.

others follow.] The Clerks of the Rolls ſaid that their courſe in Chancery was, that if one f. 52 b.
holds land of the King in ſocage, and has iſſue a daughter, and dies; if ſhe ſues livery within the age of fourteen years, ſhe ſhall have it *una cum exitibus;* but if ſhe ſues livery after fourteen years, ſhe ſhall not have livery *una cum exitibus*, but only livery, &c. **Forteſcue:** In my opinion your courſe in ſuch caſe is bad, and againſt law; for in my opinion ſhe ſhall have livery *una cum exitibus* in the one caſe and in the other; becauſe ſhe is adjudged within age up to twenty years in doing anything which ſhall be prejudicial to her, viz., making a feoffment, obligation, or other contract, or anything ſimilar, &c. Prisot: It ſeems to me that ſhe ſhall not be in ward; for in my opinion the age of male and female were not one at Common Law. And the Statute of Magna Charta proves this; for although this ſtatute is in general terms at the commencement, ſtill the concluſion of the ſame ſtatute proves that it cannot be underſtood of the heirs female, but only of the heirs male, &c. &c. . . .
And Ashton, Markham, Danvers, Bingham, Danby, and Moile were of the f. 53.
ſame opinion, &c. **Forteſcue:** To the contrary. And where it is ſaid that the Statute of Magna Charta cannot be underſtood of heirs female, by reaſon of the concluſion of the ſame ſtatute, &c., it is not ſo; for although a ſtatute be general, ſtill it ſhall be taken as the law can underſtand it, and in no other manner. For there is a ſtatute which declares, that "after any one hath put himſelf to an Inqueſt, an eſſoin ſhall be allowed to him at the next day," &c., which ſtatute is general; and yet it ſhall be taken as the law can be underſtood, and not otherwiſe; for if one comes in by "Exigent," or by "Cepi Corpus," and joins iſſue, ſtill he ſhall not be eſſoined, in that he remains in cuſtody or on bail; and ſtill the ſtatute is general. So here the Statute of Magna Charta is general, and ſhall be underſtood of the heirs male and female as the law ſhall interpret: then the laſt concluſion refers to the heir male only, but the firſt part of the ſame ſtatute ſhall be underſtood as well of female as of male heirs. And alſo [that part of] the Proviſions of Merton, which commences with "as to the heir, when he is fourteen years old and more;" and this proves that the age of the heirs male and female unmarried at the Common Law was the ſame: for the ſaid ſtatute makes no exception, but is general, that is, "of the heir," &c., as well female as male. And as to what is ſaid that the Statute of Merton "of diſparagement" proves divers ages for aſſent to matrimony between male and female; it is not ſo, in my opinion. For there is only one age of aſſent to marriage in our law, and that is at fourteen years; and then it is a "marriage conſummated," and before that age it is "marriage preſumed (?)" &c. And this will be proved by the Statute of Merton, which commences "of heirs by their relations againſt the peace violently abducted," which ſtatute gives a remedy for the Lord againſt the raviſher; and this
remedy is given "of an heir being under fourteen years," &c.; and this ſtatute is alſo f. 53 b.
general, and relates as well to heirs female as to heirs male, and *vice verſâ*. Then if one is poſſeſſed of the wardſhip of a woman under fourteen years, and ſhe be raviſhed after twelve years and under fourteen years, and the raviſher marries her, and the Lord brings a writ of

ment de Garde," et recovre, il recoverra le valu de le mariage envers le raviſer : et ceo prove que ele puit diſagreer a xiv ans ; car ſi ele ne purra diſagreer a xiv ans, donq le valu de le mariage ſera recoverte envers heire meſme, et nemy envers le raviſſeur, pur ceo que ne ſera my ajuge ſon fait, mes le fait de la heire. Car le Statut *de diſparagatione* eſt *Si autem fuerit xiv annorum [et] ultra [ita] quod conſentire poſſit, et tali maritagio [conſenſerit] nulla ſubſequatur pœna*, &c. prove que l'age l'un et l'autre ſont tout un : iſſint touts les Statuts ſont generals, et auxi ſeront entendu des heirs females come des heirs males, et *e contra*. Donque le Statut de W. premier face diverſite perenter heirs males et females, et cele Statut prove auxi que l'age des femmes diſmariees fuit ſicome l'age d'un male : car, come ad eſte dit, cele Statut ne done a le Seignour les deux ans ouſtre xiv ans, mes le Statut reſtreine ſon pouvoir que il ne puit tenir ouſtre xiv ans, forſpris deux ans : donque ceo prove que il purroit tenir ouſtre a le Comon Ley. Et auxi come ad eſte dit, cele Statut fuit fait pur un remedy, et le contrarie de meſme le remedy ſera entendu que fuit a la Comon Ley, &c. Et iſſint a ma entent les Statuts provent clerement, que l'age del heire male et de la female diſmarie fuit tout un a la Comon Ley, &c. Et auxi comon reaſon ceo provera : car le reaſon a la Comon Ley que l'heir celuy qui tient ſa terre per ſervice de Chevalier ſera en garde durant ſon nonage eſt, et fuit, entant que l'heire durant le nonage n'ad diſcrecion a ruler ſon enheritance, et eſt de noi pouvoir a faire les ſervices deus de ſa terre : et auxint que n'eſt de pouvoir a porter arne en guerre : et pur ceo comon reaſon voille que le Signior luy aura en ſon garde tan qu a le pleine age. Et auxi le Statut de Merton dit, que le garde *de mero jure ad Dominum feodi pertinet*, &c. Donque comon reaſon, qui eſt Comon Ley, eſt que un heire male ſera en garde juſque a xxi ans, par cauſe de l'innocency et ſon nonability, &c., et devant ceo la Ley entende que il n'ad diſcrecion : donque meſme le reaſon eſt de feme diſmariée ; mes ſi ele ſoit mariée nous touts ſumus agrees que ele aura ſa xiv ans, entant que durant le coverture tout eſt en le baron a l'age de xiv ans, la Ley entende que ele eſt able d'aver un baron qui ſera de plein age, et able a faire les ſervices, &c. Et pur ceo ſi il ſoit marie a xiv ans ſoit le baron de plein age ou deins age, ele aura ſa terre maintenant : mes femme diſmariee par comon reaſon ne ſera ajuge meliour en diſcrecion, ou plus ſage, ou plus able a faire les ſervices deus de ſa terre que un home ne ſera a xiv ans, car per comon preſumpcion un home ſera ajuge plus ſage a xiv ans que un feme de meſme l'age. Et iſſint a ma entente le Statut de Magna Carta les proviſions de Merton, le Statut de Weſtminſter premier, et comon reaſon provent, que a la Comon Ley l'age de le male et de la female fuit tout un : et ſi iſſint, donque eſt l'age d'une femme diſmariee eſtre en garde juſque al' xvi ans. Et iſſint me ſemble que ele ſera en garde, &c. *Ad quod* NEDHAM *conceſſit.*

"Raviſhment of ward" and recovers; he ſhall recover the value of the marriage againſt the raviſher; and this proves that ſhe can diſagree at fourteen years; for if ſhe cannot diſagree at fourteen years, then the value of the marriage ſhall be recovered againſt the heir herſelf, and not againſt the raviſher; becauſe it ſhall never be adjudged his act, but the act of the heir. For the Statute of Diſparagement is, "but if the heir ſhall have been of fourteen years and upwards, ſo that he can conſent, for ſuch marriage no penalty follows," &c., proving that the age of the one and the other are the ſame; ſo all the ſtatutes are general, and ſhall be underſtood of heirs female as well as of heirs male, and *e contra*. Then the ſtatute of Weſtminſter the Firſt makes a diſtinction between heirs male and female; and this ſtatute alſo proves that the age of females unmarried was the ſame as the age of a male. For, as has been ſaid, this ſtatute does not give to the Lord the two years beyond fourteen years, but it reſtrains his power, ſo that he cannot hold beyond fourteen years, except for two years: then this proves that he would be able to hold over at Common Law. And alſo, as has been ſaid, this ſtatute was made for a remedy; and the contrary of the ſame remedy ſhall be underſtood as being Common Law, &c. And ſo, in my opinion, the ſtatutes clearly prove, that the age of the heir male, and of the female unmarried, was one and the ſame at Common Law, &c. And alſo, common reaſon will prove this: for the reaſon at the Common Law, that the heir of one who holds his land by knight's ſervice ſhall be in ward during his nonage, is, and was, becauſe the heir during his nonage has not diſcretion to rule his inheritance, and is incapable of doing the ſervices due from his land, and cannot bear arms in war; and therefore common reaſon requires that the Lord ſhall have him in ward until his full age. And alſo the Statute of Merton ſays, that the wardſhip "of mere right belongs to the Lord of the fee," &c. Then common reaſon, which is common law, requires that an heir male ſhall be in ward up to twenty-one years, by reaſon of his innocency and incapability &c., and before this age the law ſuppoſes that he has no diſcretion; then the ſame reaſon holds of a female unmarried; but if ſhe is married we are all agreed that ſhe ſhall have her land at her age of fourteen years, inaſmuch as during coverture all is in the huſband when ſhe is of the age of fourteen years, and the law ſuppoſes that ſhe is able to have a huſband who ſhall be of full age, and able to do the ſervices, &c. And therefore if ſhe is married at fourteen years, be the huſband of full age or under age, ſhe ſhall have her land at once; but a woman unmarried by common reaſon ſhall not be adjudged of better diſcretion, or wiſer, or more able to do ſervices due from her land, than a man at fourteen years; for by common preſumption a man at fourteen years ſhall be conſidered wiſer than a woman of the ſame age. And ſo in my opinion, the Statute of Magna Charta, the proviſions of Merton, the Statute of Weſtminſter the Firſt, and common reaſon, prove that at the Common Law the age of male and female was the ſame; and if ſo, then the age of a woman unmarried to be in ward is up to ſixteen years. And ſo I think that ſhe will be in ward in this caſe, &c. To which NEDHAM agreed.

Anno xxxvj Hen. VI. [No Term mentioned.]

f. 24 b. Sur un "Exigent" B. Quatermains, Viconte, &c., retorna le defendant iv exactus en Bank le Roy. Et ſur ceo fuit tendu averer que le defendant fuit utlage; ſur que les Coroners de meſme County par force d'un "Certiorari" directe a eux retornent que il fuit utlage per meſme l' "Exigent." Purque le Vicont fuit amercy a l. marcs, et les eſtrets de ceo miſes en l'Eſcheker: ſur que proces iſſiſt envers luy. Sur que il vint eins, et monſtra un pardon de touts maners des miſpriſions, offences, contempts, &c., faits meſnes perenter le Certificat de les Coroners, et le amerciment ajuge, et pria que il purra de ceo eſtre diſmis; et ceo nient obſtant les barons luy commirent a le Fleet: et puis un vint en Bank le Roy, et monſtra coment Quatermains fuit en Fleet pur l'amerciment, et coment le Roy luy ad pardone, et pria un "Habeas corpus una cum cauſa" directe a le Gardien, &c.; et le Gardien ſur ceo ameſna le corps al' le barre, et monſtra la cauſe avantdite. Sur que Quartermains pleda ſon perdone avandit, et ſur ceo avoit brief d' "Allowance," recitant le chartre de pardon en autre; et fuit un general pardon, et trova ſuerte &c., ſi &c.: et l'Attorne le Roy demurra
f. 25 b. ſur ſon ple, &c. [Wangford, Choke, Laicon, and others follow.] Prisot: L'amerciment eſt bien agarde, et la party n'aura unques remedy de ceo, ſi aſcune folie fuit en luy, ſi int que il purra aver plede ſon pardon devant, et s'il ne purroit ceo pleder devant, le Court puit ceo redreſſer, &c., ſi le pardon ſoit ſuffiſant. Markham: A ceo que eſt dit, ſi un homme ſoit Attaint de felony, et eſt trove que il ad certein biens en le gard d'un home, celuy home n'aura reſpons juſque il ſoit greve, ceo n'eſt pas iſſint; mes le Court meintenant apres tiel choſe trove agardera "Scire facias" vers la party, et ſur ceo viendra en reſpons, et autrement a grand miſchief, et pur ceo la Ley ne puit eſtre ſi fort. Fortescue: Si trove ſoit per Enqueſt d'office devant l'Eſchetor, il eſt comme vous dites, et "Scire facias" iſſera; mes ſi ſoit en Bank le Roy per meſme l'Enqueſt per le quel il eſt Attaint "Scire facias" ne iſſera; et iſſint diverſite. Markham: Sir, il eſt tout un Ley, et nul diverſite; et autrement ſera grand miſchief. Fortescue: Sir, la Ley eſt come j'ay dit, et ad eſte tout dits puis que la Ley fuit commence, et nous avons pluſours courſes et formes, qui ſont tenus pur
f. 26. Ley, et ont eſte tenus et uſes per cauſe de reaſon, nient obſtant que meſme le reaſon ne ſoit preſt en memory, mes per eſtudie et labour on puit ceo trover, ſi aſcun tiele forme ou cours ſoit uſe, et avoit eſte uſe encontre reſon, n'eſt mal a ceo amender. Donque ſi on endicte de treaſon et attaint, les Seigniors immediats ont perdu lour eſchet; et le reaſon eſt, purtant que treaſon touche le Roy meſme; donque ſi on ſoit Attaint de Felony, et ſoit trove par meſme le Enqueſt en Bank le Roy que il avoit biens en la garde d'un home a la valu &c., "Scire facias" ne iſſera; et uncore ſi uſt trove per un Enqueſt d'Office, autrement ſera;

36 Hen. VI. [No Term mentioned.]

On an "Exigent," B. Quartermains, the ſheriff &c. returned the defendant as "four times exacted" in the King's Bench. And thereupon it was offered to aver that the defendant was outlawed; whereupon the coroners of the ſame county, by force of a "Certiorari" directed to them, returned that he was legally outlawed by the ſame "Exigent." Wherefore the ſheriff was amerced in 50 marcs, and the eſtreats thereof put into the exchequer: whereupon proceſs iſſued againſt him. Whereupon he came into [court], and ſhowed a pardon of all manners of miſpriſions, offences, contempts &c., done between the certificate of the coroners and the amercement adjudged; and he prayed that he might thereof be diſmiſſed. And notwithſtanding this, the Barons committed him to the Fleet; and then one came into the King's Bench, and ſhowed how Quartermains was in the Fleet for the amercement, and how the King had pardoned him, and prayed a "Habeas corpus una cum cauſa" directed to the keeper &c.; and the keeper thereupon brought his body to the bar, and ſhowed the cauſe aforeſaid; and thereupon Quartermains pleaded his pardon aforeſaid, and thereupon had a writ of "Allowance," reciting the charter of pardon in full; and it was a general pardon; and he found ſurety &c. if &c.: and the King's Attorney demurred on his plea &c. [Wangford, Choke, Laicon, and others follow.] Priſot: The amercement is well awarded, and the party ſhall never have remedy thereof; if there was any folly, it was his own, if he could have pleaded his pardon before; and if he had not been able to plead it before, the court could redreſs it &c., if the pardon be ſufficient. Markham: As to what has been ſaid that, if a man be attainted of felony, and it be found that he has certain goods in the keeping of another man, then that man ſhall not have an anſwer until he is aggrieved, it is not true; but the Court directly after ſuch matter found ſhall award a "Scire facias" againſt the party, and thereupon he ſhall come to anſwer; for otherwiſe there would be great miſchief; and therefore the law cannot be ſo ſtrong. **Forteſcue:** If it be found by inqueſt of office before the Eſcheator, it is as you ſay, and a "Scire facias" ſhall iſſue; but if it be in the King's Bench by the ſame inqueſt by which he is attainted, the "Scire facias" ſhall not iſſue; and ſo there is the difference. Markham: Sir, the law is all the ſame, and there is no difference; and otherwiſe there would be great miſchief. **Forteſcue:** Sir, the law is as I ſay, and has been always ſince the law was firſt begun, and we have many courſes and forms, which are held for law, and have been held and uſed as conformable with reaſon, although the ſame reaſon may not be remembered; but by ſtudy and labour it may be found; and if any ſuch courſe or form is and has been uſed contrary to reaſon, it is no harm to amend it. Then, if one be indicted of treaſon and attainted, the immediate lords have loſt their eſcheat; the reaſon being, that as treaſon touches the King himſelf; then if one be attainted of felony, and it be found by the ſame inqueſt in the King's Bench, that he had goods in the keeping of a man to the value &c., a "Scire facias" ſhall not iſſue; and yet if it had been found by an inqueſt of office, it would be otherwiſe;

f. 24 b.

f. 25 b

f. 26

car l'enquerir d'un Court de Record eſt plus fort que un enquerir devant l'eſchetor, et paraventure ceo eſt le reaſon; et ſi ne ſoit, par laiſure jeo purrai trover un meliour &c. Mes il puit venir eins gratis devant que les eſtrets ſoient mis en l'Eſchequer, et dire que il n'avoit tiels biens; et iſſint ferez vous en votre deliverance &c. ASHTON: Si tiel choſe ſoit trove devant Juſtices de Gaole delivery, Juſtices de paix, ou Oier et Terminer, les Juſtices doivent mettre lour eſtret de ceo en l'Eſchequer, et nul proces ſera fait envers eux par les Juſtices. PRISOT: Il eſt voyer; et a ma entente quand les Barons firent proces aver levi envers tiel home, il ne poit tendre travers devant les Juſtices de Gaole delivery, pur ceo que ils ne poient faire un "Superſedeas" a les Barons a ſurceſſer &c. Mes il covient ſuir un "Certiorari" et remover le recorde en Bank le Roy, et la tendre averement, et aver "Superſedeas" &c. directe a les Barons; et iſſint ſera ſi trove ſoit en Bank le Roy apres eſtrets deliveres en l'Eſchequer: et iſſint n'ad tiel miſchief come MARKHAM ad reherce. **Forteſcue** dit a les Apprentices, Serjants, et autres de ſes compaignons, que a ſon entente les points en le cas furent; le quel les paroles de le pardon furent ſufficient ou nemy; le quel le certificacion de le Coroner cauſera Quatermains eſtre attaint ou nemy; et le quel il ad ſurceſſe ſon temps ou nemy: et ſur ceux points ſoies aviſes encontre un autre jour.

Et nota que **Forteſcue** dit que Quatermains pur[ra] aver dit apres le certificacion, que ceux qui firent le certificacion furent diſcharges de l'Office de le Coroner &c., et ceo preve que il ne ſera attaint: car quand un home en Attaint d'un choſe, il n'aura reſponſe en apres.

Anno xxxvj HEN. VI. [No Term named.

f. 32. Un Aſſiſe fuit porte en le County de Suſſex, par Babilon et Iſabelle ſa feme, envers John Finch. Et furent adjournes en l'Eſchequer Chambre. Et le pleint fuit de viij acres de terre. Et le tenant plede en barre, que un eſtranger fuit ſeiſi de meſme la terre, et luy enfeoffa, et done colour a le pleintif, &c. A que les plaintifs diſent que autrefois la dit feme porta brief de Dower envers un eſtranger, et demanda par ſa brief ſa reaſonable dower de le franktenement que W. F. jadis ſon baron en divers villes: le brief original fuit ſervi, et le
f. 32 b. tenant fiſt le defaut; ſur que la feme fiſt ſa demande de la tierce part de le manoir de B. et de le manoir de C., de quel manoir de C. cele terre mis en view eſt parcele; ſur que "Grand Cape" iſſiſt retornable &c., et proces continue tanque il avoit Jugement de recoverie par defaut et aver execution et cele terre entre autres mis en execucion, par force de quel il fuit ſeiſi tanque per le tenant diſſeiſi &c. A que le tenant diſoit, que iv acres de terre parcele de le dit manoir de C. furent &c., deins les v. Ports et giſant en la ville de Winchelſee, que eſt de le Franchiſe de v. Ports ou le brief le Roy ne courte my, et iſſint le recovery faux et

for the inquiry of a Court of Record is ſtronger than an inquiry before the Eſcheator, and perhaps this is the reaſon; and if it be not, I ſhall in time be able to find a better one; but he can come into court of his free will before the eſtreats are ſent to the Exchequer, and declare that he had no ſuch goods; and thus ſhall you do in your deliverance &c. ASHTON: If ſuch a matter be found before the Juſtices of Gaol Delivery, Juſtices of the Peace, or of Oyer and Terminer, the Juſtices ought to ſend their eſtreat thereof into the Exchequer, and no proceſs ſhall be made againſt them by the Juſtices. PRISOT: It is true; and in my opinion when the Barons make proceſs to have a levy againſt ſuch an one, he cannot tender a traverſe before the Juſtices of Gaol Delivery, becauſe they cannot make a "Superſedeas" to the Barons to make them ſurceaſe &c., but he muſt ſue a "Certiorari," and remove the record into the King's Bench, and there tender an averment, and have a "Superſedeas" directed to the Barons, and ſo it ſhall be if it be found in the King's Bench after the eſtreats delivered into the Exchequer; and ſo there is no ſuch miſchief as MARKHAM has rehearſed. **Fortescue** ſaid to the apprentices, ſergeants, and others of his company, that in his opinion the points in the caſe were, whether the words of the pardon were ſufficient or not; whether the certificate of the coroner ſhall cauſe Quatermains to be attainted or not; and whether he has ſurceaſed his time or not; and upon theſe points (ſaid he) be adviſed againſt another day.[1]

Note, that **Fortescue** ſaid that Quatermains could have ſaid, after the certification, that thoſe who made it were diſcharged from the office of coroner &c., and this proves that he ſhall not be attainted; for when a man is attainted of a thing, he ſhall have no anſwer afterwards.

36 HEN. VI. [No Term named.]

An Aſſize was brought in the county of Suſſex by Babilon, and Iſabella his wife, againſt John Finch. And they were adjourned to the Exchequer Chamber. And the plaint was for eight acres of land. And the tenant pleaded in bar that a ſtranger was ſeiſed of the ſame land, and enfeoffed him; and he gave colour to the plaintiffs &c. To which the plaintiffs ſaid that formerly the ſaid woman brought a writ of "Dower" againſt a ſtranger, and demanded by her writ her rightful dower of the frank tenement which belonged to W. F., formerly her huſband, in divers towns; and the original writ was ſerved, and the tenant made default; whereupon the woman made her demand of the third part of the manor of B. and of the manor of C., of which manor of C. this land ſet in view, is parcel. Whereupon a "Grand Cape" iſſued, to be returned &c., and proceſs continued until ſhe had judgment of recovery by default, and to have execution, that land amongſt others being put in execution; by force of which ſhe was ſeiſed until diſſeiſed by the tenant &c. To which the tenant ſaid, that four acres of land, parcel of the ſaid manor of C., were &c. within the Cinque Ports, and lie in the town of Winchelſea, which is in the liberty of the Cinque Ports, where the f. 2. f. 32 b.

[1] See page 102, poſt.

feint en Ley. Et demande &c. Sur que demurra en Jugement. [TAVERNER, WANGFORD, and others deliver opinions.] WANGFORD, a le contrarie: Et Sir, a ma conceit en aſcun cas celuy qui eſt eſtranger ne voidera unques recoverie. Come ſi un accion ſoit porte envers un, et pendant le brief il enfeoffe un eſtranger de meſme la terre en accion, et puis demandant recovere, cele eſtranger ne voidra unques cele recoverie: car le tenant en le action ſera eſtoppe, et iſſint ſera celuy qui vient eins par luy. Mes en Aſſiſe ſi un recoverie ſoit plede envers un eſtranger, et le poſſeſſion le plaintiff meſne parentre le title et le brief porte, la poit le plaintif voider le recoverie, come a monſtrer que le tenant poit aver plede un releas en le ple, ou autre matter en barre; ou que le tenant mouruſt pendant le brief; ou que le tenant n'avoit rien en la terre pendant le brief: car ceux matteres provent
f. 33. que le recoverie eſt void, ou ſans title: pur ceo eſt reaſon que celuy que eſt tout eſtranger aura avail de ceo, entant que ſon poſſeſſion fuit devant le brief, et puis le title: mes ſi fuit pendant le brief, autrement ſera &c.: donque eſt en noncertein icy en ceo cas, le quel le poſſeſſion le tenant fuit meſne perenter le title et le brief porte, ou pendant le brief: donque ſera pris le plus fort encontre luy, ſcavoir, que fuit pendant le brief; en quel cas il ſera auxibien eſtoppe come le tenant vers qui le recoverie ſe taile duiſt aver eſte eſtoppe. Et auxy ceſt terre que il ad ſurmis eſtre deins les v. Ports n'eſt la terre miſe en vieu, et n'appert le quel il ſoit ſeiſi de ceo ou nemy, et iſſint tout eſtranger; et meſque il ſera come ad eſte dit, que le recovery ſera voide, quant a ceo deins les v. Ports, uncore il eſt bon quant a ceo que fuit dehors, dont cele terre mis en view eſt parcele &c. Et auxi jeo entende que on ne voide unque un recoverie ſinon que ſoit per matter que prove que ceo eſt nulle recovery, ou de ceo voider en le title, mes on ne fauxera le recoverie par matter dilatorie, le quel le tenant purra aver plede. Car ſi "Precipe quod reddat" ſoit porte vers un per une feme, et ele prende baron pendant le brief, et puis ele recovere, un eſtranger ne fauxera cele recoverie per cauſe que le tenant purra aver plede en abatement de brief, le quel ſon eſtat fuit meſne ou pendant le brief, pur ceo que celuy mattere ne fuit forſque dilatorie. Iſſint icy, celuy matter icy quel le tenant en le brief de dower pur[ra] aver plede, ne fuit forſque dilatorie, de quel nul aura avantage ſinon le tenant meſme: et iſſint a ma entent il ne voidera icy le recovery per cele matter &c. **Fortescue:** Sir, me ſemble a meſme l'entente. Et come ad eſte dit, aſcun recovery ſera voide par celuy que eſt eſtranger, et aſcun nemy. Come ſi un recovery ſoit plede envers un eſtranger, et l'eſtat celuy vers qui le recoverie eſt plede, eſt meſne perenter le title celuy que recovere et le brief; la il puit voider le recovery come adire que le tenant purra aver plede releas, ou autrement puit dire que le tenant mouruſt pendant le brief, en quel le tenant n'avoit rien &c., ou que la terre fuit en auter County; car toutes les matters provent le recovery void, et come un recovery; ou autrement provent

King's writ does not run; and so the recovery is false and feint in law. And he prays &c. Whereupon he demurred in judgment. [TAVERNER, WANGFORD, and others deliver opinions.] WANGFORD, to the contrary: And, Sir, in my opinion, in any case, he who is a stranger shall never vacate a recovery. As if an action be brought against one, and pending the writ he enfeoffs a stranger of the same land in action, and then the demandant recovers, the stranger shall not vacate this recovery; for the tenant in the action shall be estopped, and so shall he be who comes in by him. But in an Assize, if a recovery be pleaded against a stranger, and the possession of the plaintiff be mesne between the title and the writ brought, then can the plaintiff avoid the recovery, as by showing that the tenant might have pleaded a release in the plea, or some other matter in bar: or that the tenant died pending the writ; or that the tenant had nothing in the land pending the writ; for these matters prove that the recovery is void, or without title; wherefore it is right that he who is altogether a f. 33. stranger shall have the advantage thereof, inasmuch as his possession was before the writ, and since the title; but if it were pending the writ, it would be otherwise &c. Now it is noncertain here in this case, whether the possession of the tenant was mesne between the title and the writ brought, or pending the writ; then the case shall be taken strongest against him, viz., that it was pending the writ; and in this case he shall be estopped, as well as the tenant against whom the recovery was had would have been estopped. And also the land which he has surmised to be in the Cinque Ports, is not the land set in view; and it does not appear whether he is seised of it or not, and so it is altogether foreign. And although it should be, as has been said, that the recovery shall be void as to that which is within the Cinque Ports, still it is good as far as concerns what is without, of which the land set in view is parcel &c. And also, I think that a recovery shall never be avoided, except it be by matter which proves that it is no recovery, or by avoiding it on matter of title; but one shall not falsify the recovery by dilatory matter which the tenant might have pleaded. For if a "Præcipe quod reddat" be brought against one by a woman, and she takes a husband pending the writ, and then she recovers, a stranger shall not falsify this recovery by reason that the tenant might have pleaded in abatement of the writ, whether his estate was mesne or pending the writ, because that matter was only dilatory. So here, this matter here which the tenant in the writ of "Dower" might have pleaded, was only dilatory, of which none shall have advantage except the tenant himself; and so, in my opinion, he shall not avoid the recovery here by this matter. **Fortescue:** Sir, it seems to me in the same way. And, as has been said, one recovery shall be avoided by him who is a stranger, and another not. As if a recovery be pleaded against a stranger, and the estate of him against whom the recovery is pleaded, is mesne between the title of him who recovers and the writ; in that case he can avoid the recovery, as by saying that the tenant might have pleaded a release; or otherwise he can say that the tenant died pending the writ; or that the tenant had nothing &c.; or that the land was in another county; for all these matters prove the recovery void, and no recovery; or

le title celuy qui recovere rien. Mes ſi un recovery ſoit plede, et l'eſtat celuy envers qui le recovery eſt plede eſt meſme parenter le dete le brief et le recovery, il ne fauxera ceo en le title, car il eſt auxibien eſtoppe come le tenant meſme ſera: mes tiel matter come le tenant meſme purra aver plede, poit aver; come a prover le recoverie nul, come adire que le tenant fuit mort pendant le brief; ou que le tenant n'avait rien en la terre pendant le brief; ou que la terre fuit en auter Countie. car ceux matters provent le recoverie *ipſo Jure nullum*. Et de ceo chefcun eſtrange ad availe, et la party meſme auxi, et aſcun de ceux recoveries purront eſtre voide per voye de reſpons, ou per voye de brief d'Error. Come ſi "Præcipe quod reddat" ſoit porte envers un de certaines terres, que n'ad rien en meſme la terre, s'il apparuſt et plede come tenant, il eſt eſtoppe autrefois a ceo voider pur ceſte cauſe, et uncore ſon heir aura brief d' "Error," ou ceo fauxera par voye de reſponſe a ſon eleccion. Et meſme la Ley ſera des terres en autre County, ou ſi le tenant mouruſt pendant le brief, l'heir puit aver brief d' "Error," ou puit avoider le recovery par voye de
f. 33 b reſponſe: car ceux recoveries ſont *ipſo Jure nullum*. Mes ſi ſoit par accion trie, ne ſera faux en meme le point qui ad eſte trie: iſſint un eſtranger n'uſt fauxe un recoverie ſi on que ſoit meſne perenter le title et le brief porte, auxibien en le title, come per matter de prover le recoverie void. Mes par cauſe de matter dilatorie, celuy qui eſt eſtrange, ou celuy qui eſt privie ou party ſoit ſon eſtat meſne perentre &c. ou pendant le brief il ne unques fauxera un recoverie; come adire que le tenant purra aver abatu le brief, entant que le demandant priſt barre, pendant le brief; ou que le tenant purra aver plede un utlagerie, ou excommengement en le perſon le demandant; ou que le tenant purra aver plede en abatement de brief, per tant que ſon entre fuit ſuppoſe; ou per cauſe que le demandant ent a pendant le brief; ou par cauſe que la tenure fuit Ancien demeſne et tiel ſemblable. Et uncore par ceux matterz le brief abatera, ſi l'excepcion uſt eſte pris: mes toutes ceux matters ne provent mes que le title celuy qui recovere fuit bon, et auxy le recoverie bon en luy meſme, et pur ceo un recoverie ne ſera unques faux par ceo meſne. Et auxy n'eſt monſtre icy, le quel ſon eſtat fuit meſne ou nemy &c. et donque ceſt matter quel le tenant en le brief de Dower purra aver plede ne fuit forſque dilatorie, et ne diſprove le title la feme, ne prove nient le pluis mes que le recoverie fuit bon auxibien de la terre deins les v. Ports, come de ceo dehors. Et a le moinz il eſt bon quant a la terre or mis en Vieu: car il n'ad dit que ceo eſt deins les v. Ports, mes eſt autres iv. acres de terre &c. Donques le recoverie en le brief Dower eſt plede icy per voye de title le plaintif; donque de fauxer cele title ou de traverſer cele title ſans conveier a luy melior n'eſt my ple: car quand ils furent en poſſeſſion par force de le recoverie, ſoit recoverie bon ou faux, il ne li a nully d'entrer ſur luy ſinon que il ad melior droit: car le poſſeſſion que le tenant done a le plaintif ne fuit pas title a luy, et pur ceo il poit luy conveier melior, et iſſint ad ſuit a large per

otherwiſe they prove the title of him who recovers to be nothing. But if a recovery be pleaded, and the eſtate of him againſt whom the recovery is pleaded is meſne between the date of the writ and the recovery, he ſhall not falſify that in the title; for he is as much eſtopped as the tenant himſelf ſhall be. But ſuch matter as the tenant himſelf ſhall have, he can have, for to prove the recovery null; as by ſaying that the tenant died pending the writ; or that the tenant had nothing in the land pending the writ; or that the land was in another county; for theſe matters prove the recovery *ipſo jure* null. And of this every ſtranger has the benefit, and the party himſelf alſo; and ſome of theſe recoveries may be avoided by way of anſwer, or by way of writ of "Error." As if a "Præcipe quod reddat" be brought for certain lands againſt one who has nothing in the ſame land, if he appear and plead as tenant, he ſhall thereby be eſtopped from avoiding this; and ſtill his heir ſhall have a writ of "Error," or he ſhall falſify this by way of anſwer at his election. And the ſame law ſhall hold of lands in another county; or if the tenant died pending the writ, the heir can have a writ of "Error," or can avoid the recovery by way of anſwer: for thoſe recoveries are *ipſo jure* null. But if it be tried by action, it ſhall not be falſified on [33]
the ſame point on which it was tried: ſo a ſtranger would not have falſified a recovery, unleſs the ſame be meſne between the title and the bringing of the writ, as well in point of title as by matter to prove the recovery void. But by reaſon of dilatory matter, he who is a ſtranger, or he who is privy or party, be his eſtate meſne between &c., or pending the writ, ſhall never falſify a recovery by ſaying that the tenant could have abated the writ inaſmuch as the demandant took a huſband pending the writ; or that the tenant could have pleaded an outlawry or excommunication of the perſon of the demandant; or that the tenant could have pleaded in abatement of the writ, foraſmuch as his entry was not ſuppoſed; or by reaſon that the demandant entered pending the writ; or by reaſon that the land was of the ancient demeſne, and ſuch like. And ſtill by theſe matters the writ would have abated if the exception had been taken; but all theſe matters only prove that the title of him who recovered was good, and alſo the recovery good in itſelf; and therefore a recovery ſhall never be falſified by this means. And alſo it is not ſhown in this caſe whether his eſtate was meſne or not &c.: and then, this matter which the tenant in the writ of Dower could have pleaded was only dilatory, and does not diſprove the woman's title, and proves nothing more than that the recovery was good, as well of the land within the Cinque Ports, as of that without. And at leaſt it is good as to the land now ſet in view; for he has not ſaid that it is within the Cinque Ports; but it is other four acres of land &c. Then, the recovery in the writ of "Dower" is pleaded here by way of title of the plaintiff; then, to falſify this title, or to traverſe this title without conveying to himſelf a better one, is not a plea; for when they were in poſſeſſion by force of the recovery, be the recovery good or bad, it is not lawful for any to enter upon them without a better right: for the poſſeſſion that the tenant gave to the plaintiff was not a pure title to him, and therefore he may convey to himſelf a

force de le recovery. Donque ſi Aſſiſe ſoit porte envers un home, et il plede en barre que un eſtranger fuit ſeiſi, et luy enfeoffa, et le plaintif en claimant per colour &c.; a que le plaintif luy fait title, et dit que un autre eſtranger fuit ſeiſi et luy enfeoffa, et iſſint fuit ſeiſi tanque diſſeiſi &c., il n'eſt ple adire que il ne luy enfeffa, ſinon que il conveye a luy title: car s'il fuit ſeiſi per quel que ceo fuit, il ne liſt a nully luy ouſtre. En Aſſiſe de "Mort dancestor" la Ley eſt autre, car la eſt bon ple adire que il eſt baſtarde ſans conveir a luy meſme le title, entant que il eſt en poſſeſſion et le demandant ne fuit unque ſeiſi: donque icy quand les plaintifs furent ſeiſi per force de le recoverie, ſoit le recoverie faux ou bon, ne fuit loial a le defendant eux ouſter ſans title. Et ouſter a ma conceit le recoverie eſt aſſez bon: car il y ad divers maners de les Franchiſes, un en Gales, ou le brief le roy ne court. Car ſi "Præcipe quod reddat" ſoit porte icy en Gales, ſi un recoverie ſoit taile de ceo il eſt voide, et *coram non Judice* car n'eſt par cele de le roiaume d'Angleterre, et pur ceo ceſt Court n'ad Juriſdiction la, ſinon que ſoit des advowſonz, car "Quare impedit" ſera porte icy des Egliſes de Gales, et ſera ſues en le County ajoinant, pur ceo que les Juſtices ne voilent obeir aſcun home la. Un autre Franchiſe eſt Count Palantin, comme Durham ou Cheſtre, quel eſt d'autre nature que Gales n'eſt. Car ſi on vouche a garranter un autre en Cheſtre "Summoneas ad auxiliandum" ne iſſera en le County Palantine, mes un eſpecial brief iſſera a le Seignior de la Franchiſe, a faire proces a luy ſommondre &c., par ceo meſne un Jugement ſera taile de recoverer en value ci de terre deins le County Palantine, et iſſint ne poit eſtre
f. 34. de terre en Gales. Un autre eſt des terres en Ancien demeſne, et ſi l'accion ſoit porte en ceo Court des Terres en Ancien demeſne, et un Jugement taile ſur ceo, la terre eſt devenu frankfee, et le recoverie eſt aſſez ſufficient; et de tiel recoverie le Seignior de Ancien demeſne puit aver brief de "Deceit," pur reconter arriere ſon Seigniory, et tiel Franchiſe purſuit le tenancy. Un autre Franchiſe eſt les v. Ports. Et ſi un Accion ſoit porte de terre deins les v. Ports, et Jugement taile ſur ceo, le recovery eſt aſſez ſufficient a ma entente, et ne ſera defete par brief de Deceit; et uncore a autre temps il ne ſera impledable ſi excepcion ſera pris de ceo en autre accion; car eſt ſemble al' conuſance de ple: car ſi un accion ſoit porte envers un home de terre de quel un eſtrange doit aver conuſance, ſi Jugement ſoit done et nulle claime le Jugement, eſt aſſez ſufficient, et uncore a autre temps quant eſt autrefois en action il avera conuſance aſſez bien. Et ſi action ſoit porte envers un de terre, et un eſtranger vient et claime conuſance de ple de parcele de meſme la terre, le brief abatera: car conuſance ne poit eſtre grante; car tout le original duiſt eſtre delivere a luy, le quel ne poit eſtre: et pur ceo il eſt plus reaſon d'abatre le brief, et luy mittre a ij briefs que il ſera ouſte de le conuſance; et iſſint brief ſera abatu par un eſtranger: et iſſint icy a ma entent un

better; and so has sued at large by force of the recovery. Then, if an Assize be brought against a man, and he pleads in bar that a stranger was seised, and enfeoffed him, and the plaintiff claims by colour &c.; on which the plaintiff makes himself entitled, and says that another stranger was seised and enfeoffed him, and so he was seised until disseised &c.; it is no plea to say that he did not enfeoff him, unless he convey to himself a title; for if he was seised by any one whomsoever, it is not lawful for any one to oust him. In an Assize of "Mordanceſtor" the law is otherwise, for there it is a good plea to say that he is a bastard without conveying to himself the title; inasmuch as he is in possession and the demandant was never seised. Then, here, when the plaintiffs were seised by force of the recovery, be the recovery bad or good, it was not lawful for the defendant to oust them without title. And, moreover, the recovery is, in my opinion, good enough; for there are divers kinds of liberties: one is Wales, where the King's writ does not run. For if a "Præcipe quod reddat" be brought here [for land] in Wales, and a recovery be adjudged thereon, it is void, and *coram non Judice*, for it is not parcel of the kingdom of England; and therefore this Court has no jurisdiction there, except in respect of advowsons: for a "Quare impedit" shall be brought here in respect of churches in Wales, and shall be sued in the county adjoining, because the Justices will not obey any man there. Another sort of liberty is a County Palatine, such as Durham or Chester, which is of a different nature from Wales. For if one vouch to warranty another in Chester, a summons "ad auxiliandum" shall not issue in the County Palatine, but a special writ shall issue to the Lord of the Liberty to make process to summon him &c.; by this means a Judgment shall be awarded to recover in value here land in the County Palatine; and this cannot be of land in Wales. Another is f. 34.
of lands in Ancient Demesne; and if an action be brought in this court for lands in Ancient Demesne, and judgment be given thereon, the land becomes frankfee, and the recovery is sufficient; and on such recovery the Lord of Ancient Demesne can have a writ of "Deceit" to recover back his seignory; and such a liberty follows the tenancy. Another liberty is the Cinque Ports. And if an action be brought for land within the Cinque Ports, and judgment be given thereon, the recovery is sufficient in my opinion, and shall not be defeated by writ of "Deceit;" and still, at another time, it shall not be, if exception thereto be taken in another action: for it is similar to the cognizance of a plea; for if an action be brought against a man for land of which a stranger ought to have cognizance, if judgment be given and there be no claim, the judgment is quite sufficient; and still at another time when it is again in action, he shall have cognizance quite well. And if an action be brought against one for land, and a stranger comes and claims cognizance of the plea in respect of parcel of the same land, the writ shall abate; for cognizance cannot be granted, for the whole of the original ought to be delivered to him, which cannot be: and therefore it is more reasonable to abate the writ, and to put him to two writs, than that he shall be ousted of cognizance; and so the writ shall be abated by a stranger. And so here, in my

recovery taile icy de terre deins les v. Ports ou deins Ancien demeſne eſt aſſez ſufficient, et nemy *coram non Judice*. Et n'eſt ſemble a un recoverie de terre en auter County, ou ſi recoverie ſoit taile en Ancien demeſne, de terre que eſt hors de Ancien demeſne; car tielz recoveries ſont *coram non Judice;* mes ſi "Formedon" ſoit porte vers un home en Bank le Roy, eſt aſſez ſufficient; iſſint a ma entente eſt de terre deins les v. Ports en le Comon Bank, car le Franchiſe de v. Ports ad eſte de temps dont memorie &c. Et eſt confirme per le Statut de Magna Charta, mes n'eſt eſcrit en certein, quel Franchiſe ilz ont; mes divers Franchiſes ilz claiment, un entre autres, ſi aſcun miniſter le roy vient, deins le Franchiſe d'arreſter aſcun homme, que ſon teſte ſera infreinte: mez nient obſtant que le recoverie ſoit voide, quant de la terre deins les v. Ports, uncore il eſt bon quant a ceo or mis en vieu, et auxi ſon eſtat n'eſt monſtre meſne &c., mes icele eſt monſtre pur title: donques ſoit faux ou voier, il ne fuit loial a nul de eux ouſter ſans title. Et pur ceo a ma entente le pleding n'eſt bon. Purque il agarda l'Aſſiſe de le remainder, &c.

De Termino Michaelis, Anno xxxvii. Hen. VI.

f. 1. En brief "Error" port en Bank le Roy par le Prior de Walſingham vers le Duc de Buckingham et autres, et il aſſigna pur error que ou le Seignior fuit eins en la terre par voye d'eſchet, pur ceo que ſon tenant mouruſt ſeiſi ſans heir, que l'entre celuy qui avoit l'eigne droit fuit ajuge loial, ou il fuit torciouz. Si come un mouruſt ſeiſi, ſon heir eſt eins par deſcent, l'entrie ceſty qui ad droit n'eſt congeable ſur l'heir quel eſt eins per cours de Ley, et ſi come l'heir eſt ajuge tenant apres la mort ſon pere coment qu'il n'entra pas come a brief uſer: iſſint eſt le Seignor ajuge tenant en Ley, ou le tenant mouruit ſans heir. Starkey et Spilman a le contrary. . . . . **Fortescue:** Perentre les caſes eſt grande deverſite, come Spilman ad bien dit: car ou l'heir eſt eins par deſcent, la eſt un grande privite de ſang, et eſt merement eins per ſon anceſtre a toutes ententes, et il eſt ajuge tenant per Ley; et ceo eſt la cauſe que il ne ſera ouſte de ſon poſſeſſion ſans cours de Ley: mes iſſint n'eſt en l'autre cas, car la eſt nul privity, ne le Seignior ne claime par le tenant eins en ſon eigne droit. Et meſme le Ley de le cas en le remainder; et le Ley pluſtoſt ſuffre miſchief que enconvenience: car il eſt inconvenient que ceſty qui eſt eſtranger ſera ajuge tenant ſans entre. Et en ſemble cas, ſi une feme mouruſt ſeiſi, et avoit iſſue, et le baron ſe tient eins par le Curteſie, l'entre celuy qui ad droit eſt congeable ſur le tenant par le Curteſie, nient obſtant le mourant et le deſcent. Mes la cauſe eſt, pur ceo que le baron ne claime eins par la feme, eins en ſon droit demeſne; mes ſi le baron mouruſt or l'entre n'eſt congeable ſur l'heir, *cauſa qua ſupra*, et iſſint le diverſite. Et opinion Curiæ. *Quod nota.*

opinion, a recovery adjudged here of land within the Cinque Ports or in Ancient Demeſne is ſufficient, and not *coram non Judice*. And it is not like to a recovery of land in another county, or to recovery adjudged in Ancient Demeſne of land which is out of Ancient Demeſne; for ſuch recoveries are *coram non Judice*; but if "Formedon" be brought againſt a man in the King's Bench, and a recovery be adjudged thereon, or if a fine be levied in the King's Bench, it is ſufficient. So, in my opinion, it is of land in the Cinque Ports, in the Common Bench; for the liberty of the Cinque Ports has been from time of which memory &c.; and it is confirmed by the Statute of Magna Charta, but it is not written in certain words what franchiſes they have; but they claim divers franchiſes; one among others being that if any of the King's ſervants come into the liberty to arreſt any man, his head ſhall be broken. But notwithſtanding that the recovery be void as to the land within the Cinque Ports, ſtill it is good as to the land which is now ſet in view; and alſo, his eſtate is not ſhown to be meſne &c., but this is ſhown for title; then be it falſe or true, it was not lawful for any one to ouſt them without title. And therefore, in my opinion, the pleading is not good. Wherefore he awarded the Aſſize as to the remainder &c.

Michaelmas Term, 37 Hen. VI.

In a writ of "Error" brought in the King's Bench by the Prior of Walſingham againſt f. 1.
the Duke of Buckingham and others, he aſſigns for error that whereas the Lord was in the land by way of eſcheat, becauſe his tenant died ſeiſed without an heir, the entry of him who had the elder right was adjudged legal, whereas it was tortious. As when one dies ſeiſed, his heir is in by deſcent; and the entry of him who has the right upon the heir who is in by courſe of law is not congeable; and as the heir is adjudged tenant after the death of his father, although he did not enter by means of a writ, ſo is the Lord adjudged tenant in law where the tenant died without heir. Starkey and Spilman to the contrary. . . . .

Forteſcue: Between the caſes there is a great diſtinction, as Spilman has well ſaid; for where the heir is in by deſcent there is a great privity of blood, and he is entirely in by his anceſtor to all intents; and he is adjudged tenant by law; and this is the reaſon that he ſhall not be ouſted of his poſſeſſion without courſe of law; but it is not ſo in the other caſe; for there there is no privity, and the Lord does not claim by the tenant, but in his elder right. And the law is the ſame in the caſe of a remainder; and the law rather ſuffers miſchief than inconvenience: for it is inconvenient that he who is a ſtranger ſhould be adjudged tenant without entry. And in a like caſe, if a woman dies ſeiſed, and has iſſue, and the huſband holds himſelf in poſſeſſion by the curteſy, the entry of him who has right on the tenant by the curteſy is congeable, notwithſtanding the deceaſe and deſcent. But the reaſon is becauſe the huſband does not claim to be in by the woman, but in his own right; but if the huſband die, then entry on the heir is not congeable, for the reaſon above given; and ſo the diſtinction. And it was the opinion of the Court; which note. (Where entry

(Ou entrie eſt congeable nient obſtant eſchet al' Seignior. P. 9, H. 7, f. 24). Et l'Opinion **Forteſcue** eſt, que le Seignior aura brief d'Eſchet, et droit de garde coment que le tenant ne mouruſt ſeiſi: car le mourant ſeiſi n'eſt pas traverſable. Pole tient le contrary. *Quod nota.* (*Quære* Legem, &c.)

De Termino Michaelis, Anno xxxvii. Hen. VI.

f. 4. En l'Eſchequer Chambre devant Touts les Juſtices le cas fuit tiel ſur le Statut, que nulle eſkippe laines, pelis, ſinon a Caleis; et il que face, perdra le double valu. Et ouſter par ceſt Statut, ceſty que poet eſpier, aura la tierce part apres que il ſoit attaint deument, ou que il confeſſe en Court de record. Et ſur ceo vient un J. en l'Eſchequer Chambre, et fiſt ſuggeſtion que un H. avoit eſkippe certaines laines, pelis, &c. encountre le Statut, et avoit proces envers luy. Qui vient, et plede le chartre le Roy: et or le quel ſa chartre de pardon ſera barre ver le roy ou nemy, s'il ne ſoit barre vers le roy, ou s'il ſoit barre vers J. ou nemy; ce fuit ſi bien argue mes nemy ajuge, &c. Choke: Semble que le chartre le Roy, ne barre le Roy. Car il dit, que le roy par ſa chartre de pardon fait puis l'eſkippement luy avoit pardon *ſectam pacis*, &c. &c. [Westbury, Yelverton, and others follow.]

f. 4 b. Ashton (en contrary opinion): Et dit que la party ne poet aver action ſinon que le Statut luy done action, ou autrement dit, que ceſty qui ſuit aura tant. Et iſſint eſt en le Statut de Vicontes ceſty qui ſuit, et iſſint n'eſt en cet Statute, mes ceſty que eſpiera avera &c. **Forteſcue** et Prisot diſent que ils ne poient voir per nule voye coment ceo poet eſtre dit la ſuite la party, et enſement nul accion ne ſuite eſt donne al party par le Statut. Mes Prisot diſoit, que comment que il ſera dit le ſuite le roy, uncore le chartre de pardon ne barre la party pur le intereſt que la party avoit devant le chartre. Sicome le roy grant a moy touts les fines et amerciments deins un certein lieu, coment que le roy veut pardoner ceux ceo ne barre moy: iſſint icy. Et fuit dit en meſme le ple, que ſi on porte "Decies tantum," et puis le Roy luy pardon, ou releſe, ceo n'abate mon brief per cauſe de l'intereſt que j'ay: mes ſi jeo ſue et recovre, le roy ſera barre de ſon droit demeſne par cauſe de ſa chartre de pardon: et uncore fuit dit, ſi le roy luy pardon devant aſcun ſeiſin, le chartre eſt bon barre vers quiconque qui voille ſuir. *Nota* la diverſite. Et auxi ſi les Juſtices poient barrer un de "Decies tantum" ceo ſera barre vers touts autres en apres pur ceſt matter. *Quod nota.* **Forteſcue** dit en ceo ple, que ſi un face conuſance a Roy pur fuerte de paix, le Chartre le Roy ou releas fait a celuy que eſt oblige n'eſt de force, devant q'il ad enfreint le paix, iſſint que le reconuſance eſt forfete, or poet le roy pardoner ou releſſer, et nemy devant. *Quod nota.* Et enſement fuit dit, que ſi un doit reparer un pont, et puis le roy

is congeable, notwithſtanding eſcheat to the Lord. P. 9, H. 7, f. 24.) And the opinion of **Forteſcue** is, that the Lord ſhall have a writ of "Eſcheat" and "Right of ward," although the tenant did not die ſeiſed; for the dying ſeiſed is not traverſable. POLE holds the contrary. Which note. (*Quære* the law &c.)

Michaelmas Term, 37 HEN. VI.

In the Exchequer Chamber, before all the Juſtices, the caſe was this on the Statute, f. 4.
"that none ſhip wools, or ſkins, except to Calais; and he who does ſo ſhall loſe the double value." And moreover, by this ſtatute, "he who can diſcover (the wrong) ſhall have the third part, after that he [the offender] be duly convicted, or confeſs in Court of Record. And hereupon came one J. in the Exchequer Chamber, and made ſuggeſtion that one H. had ſhipped certain wools, ſkins &c. contrary to the ſtatute, and had proceſs againſt him. And the defendant comes and pleads the King's charter; and now (the queſtion is) whether his charter of pardon ſhall be bar againſt the King or not, and if it be not a bar againſt the King, whether it be bar againſt J. or not. This was well argued, but not adjudged &c. CHOKE: It ſeems that the charter of the King does not bar the King. For he ſays that the King, by his charter of pardon made ſince the ſhipment, had pardoned ſuit of peace, &c. &c. [WESTBURY, YELVERTON, and others follow.] ASHTON (of the f. 4 b.
contrary opinion): And he ſays that the party cannot have an action unleſs the ſtatute gives him an action, or otherwiſe ſays that he who ſues ſhall have ſo much. And ſo it is in the Statute of Sheriffs, viz., that he who ſues [&c.]; but it is not ſo in this ſtatute; but [the words are] "he who ſhall diſcover ſhall have &c." **Forteſcue** and PRISOT ſay that they cannot at all ſee how this can be called the ſuit of the party; and likewiſe no action or ſuit is given to the party by the ſtatute; [wherefore &c.] But PRISOT ſaid, that although it ſhall be called the ſuit of the King, ſtill the charter of pardon does not bar the party, becauſe of the intereſt that the party had before the charter. As if the King grants me all the fines and amercements within a certain place, although the King ſhould pardon ſome one of theſe, this does not bar me: ſo here. And it was ſaid in the ſame plea that if one bring a "Decies tantum," and then the King pardon or releaſe, that does not abate my writ, by reaſon of the intereſt that I have; but if I ſue and recover, the King ſhall be barred of his own right by force of his charter of pardon: and ſtill it was ſaid, if the King pardon before any ſeiſin, the charter is a good bar againſt anyone ſoever who would ſue. Note the diſtinction. And alſo, if the jurors can bar one of "Decies tantum," that ſhall be bar againſt all others afterwards, for that matter. Which note. **Forteſcue** ſaid in this plea, that if one execute a recognizance to the King for keeping the peace, the charter of the King or his releaſe made to him who is bound is of no force, before that he has broken the peace ſo that the recognizance is forfeited; but afterwards the King can pardon or releaſe, and not before. Which note. And likewiſe it was ſaid, that if one ought to repair a bridge,

luy pardone, ceo n'eſt appurpos mes tant ſolement pur le fine que le roy meſme averoit; mes nient obſtant cele fine la party ſera chaſe a faire et reparer le pont: et la cauſe eſt la, pur ceo que eſt damage a toutz liges homes le roy, et a touts ſon people, et pur ſon miſchief que
f. 5 ceſte chartre n'eſt barre, nient obſtant que il eſt le ſuite Roy, *cauſa qua ſupra. Et ſic vide*, que le roy ne poit releſſer ſon ſuit, ou il ſera prejudice a's autres, et ils ne poient aver autre remedy; et uncore en "Decies tantum" ſi la party ſuit nonſuite le roy n'aura nul avantage par ſa ſuite, mes la le roy poit aver avantage par autre voye, come par endictment ou autrement, et iſſint il n'eſt miſchief. *Quod nota. Sic adjurmatur.*

f. 5 b. En Aſſiſe porte en le County de D. devant **Forteſcue** et Boef, que paſſa pur le plaintif, la matter fuit tiel, que le tenant pleda en barre, pur ceo que ſon pere fuit ſeiſi et par proteſtacion mouruſt ſeiſi, et il come fits et heir entra et donne colour al pleintif. Et le dit plaintif dit que un J. fuit ſeiſi de meſmes les tenements, et luy enfeffa, par force de quel il fuit ſeiſi tanque par le tenant diſſeiſi. A que le tenant dit, que ſon pere fuit ſeiſi, et par proteſtacion mouruſt ſeiſi, puis le dit J. abatit, et enfeffa le plaintif, par force de que il fuit ſeiſi, et le tenant come fits et heir a ſon pere ſur luy entra, et en fuit ſeiſi tanque par le plaintif diſſeiſi; ſur que un Davy D. entra, ſur que le tenant re-entra. Et le plaintif dit, que le pere le tenant enfeffa le dit J. qui enfeffe le plaintif *ut ſupra*, ſans ceo que J. entra apres la mort le pere le tenant Et le tenant dit que il entra *ut ſupra*, et fiſt le matter *ut ſupra*, et tout ceſte matter fuit trove per le plaintif; et le plaintif pria ſon Jugement. Et le tenant dit, que il ne ira a le Jugement, et ceo pur ceo que l'iſſue n'eſt forſque un jeofaile; en que les parties devent repleder; Et ſur ceo les Juſtices adjornent les parties devant eux meſmes a Weſtminſter a certein jour; a quel jour en l'Eſchequer Chambre devant eux meſmes tout le mater fuit reherce par Catesby, et pria Jugement pur le plaintif. Car il dit, coment que l'iſſue ne fuit material, ceo ne fuit a purpos quand le plaintif avoit fait a luy ſufficient title. A que le tenant dit que il entraſt apres la mort le pere le tenant, et enfeffa le plaintif. Et a ceo le plaintif dit que ſon pere a luy &c. *ut ſupra* &c. uſt eſte ſufficient ſans prendre le travers: donque quand il avoit ſufficient matter en maintenance de ſon title coment que uſt de abundance priſt un iſſue, qui ne fuit a purpos, uncore le matter ſuffiſt trove pur le plaintif pur aver Aſſiſe &c. A que fuit dit pur le tenant que le ple ne fuit bon: car le tenant ad departe de ſon barre, et plede novel matter: car il dit que ceſty qui enfeffa le plaintif, entraſt apres la mort ſon pere, et enfeffa le plaintif; ſur que il entra et fuit ſeiſi tanque par le plaintif diſſeiſi, ſur que un Davy D. entra; ſur que il entra et fuit ſeiſi; le quel eſt un novel mater. Enfement le plaintif ad rejointe en meintenance de ſon title, et priſt l'iſſu ſur ceo, que ne poet faire iſſue; donque eſt tout jeofaile: car ſi l'iſſue ſoit

and then the King pardon him, this is of no avail except as to the fine which the King himſelf would have; but notwithſtanding this fine the party ſhall be forced to make and repair the bridge. And the damage to all the King's liege men, and to all his people, and f. 5.
its own miſchief are the reaſons why this charter is no bar, although it is the King's ſuit: for the reaſon above. And ſo ſee, that the King cannot releaſe his ſuit, where it would be prejudicial to others, and where they cannot have other remedy; and again, in "Decies tantum," if the party were nonſuited the King ſhall have no advantage by his ſuit; but there the King can have advantage in another way, as by indictment or otherwiſe; and ſo there is no miſchief. Which note. And ſo it was adjourned.

In an Aſſize brought in the county of D. before Forteſcue and Boef, which paſſed f. 5 b.
for the plaintiff, the matter was this: that the tenant pleaded in bar, becauſe his father was ſeiſed, and, by proteſtation, died ſeiſed, and he, as ſon and heir, entered; and he gave colour to the plaintiff. And the plaintiff ſaid that one J. was ſeiſed of the ſame tenements, and enfeoffed him; by force of which he was ſeiſed until diſſeiſed by the tenant. To which the tenant ſaid, that his father was ſeiſed, and, by proteſtation, died ſeiſed, and then the ſaid J. abated, and enfeoffed the plaintiff, by force of which he was ſeiſed, and the tenant, as ſon and heir to his father, entered upon him, and was ſeiſed until diſſeiſed by the plaintiff; upon whom one Davy D. entered, upon whom the tenant re-entered. And the plaintiff ſaid, that the father of the tenant enfeoffed the ſaid J., who enfeoffed the plaintiff as above, without this that J. entered after the death of the father of the tenant. And the tenant ſaid that he entered as above, and made the matter as above; and all this matter was found for the plaintiff; and the plaintiff prayed his judgment. And the tenant ſaid that he ſhould not go to judgment; and this, becauſe the iſſue is only a jeofail, in which the parties ought to re-plead. And thereupon the Juſtices adjourned the parties to be before themſelves at Weſtminſter on a certain day; on which day in the Exchequer Chamber, before them all, the matter was rehearſed by Catesby, and he prayed judgment for the plaintiff. For he ſaid that although the iſſue was not material, that was not to the purpoſe, ſince the plaintiff had made out for himſelf a ſufficient title. To which the tenant ſaid, that he entered after the death of the father of the tenant and enfeoffed the plaintiff. To this the plaintiff ſaid that the ſtatement that his father him &c. as above &c., would have been ſufficient without taking the traverſe; then, ſince he had ſufficient matter in maintenance of his title, although he had *ex abundanti* taken an iſſue which was not to the purpoſe, ſtill the matter as found for the plaintiff was ſufficient to have an Aſſize &c. To which it was ſaid by the tenant that the plea was not good: for the tenant has departed from his bar, and pleaded new matter; for he ſaid that he who enfeoffed the plaintiff entered after the death of his father, and enfeoffed the plaintiff, on whom he entered and was ſeiſed until diſſeiſed by the plaintiff, on whom one Davy D. entered; on whom he entered and was ſeiſed: which is new matter. Likewiſe the plaintiff has rejoined in maintenance of his title, and took iſſue on that which cannot make an iſſue;

pris ſur le title, quel n'eſt iſſue forſque jeofaile, qui ſera en autre accion; per que me ſemble que ils repledent. **Forteſcue**: A ceo que il ad dit, que le tenant ad departe de ſon barre, et allege ſufficient mater en meintenance de ſon barre, et ouſtre ceo il ad allege que il fuit ſeiſi tanque par le plaintif diſſeiſi, le quel eſt un novel matter, iſſint il ad fortifie ſa matter en barre, et ad adde plus matter a ceo; et iſſint n'eſt il merement come un departer de ſon barre, et le plaintif ad meintenu ſon barre. Et ouſter ceo ad pris un travers, le que n'eſt a purpos: mes le quel il replede ou nemy ceo eſt a veier; car jeo ſcay bien en Aſſiſe ſi le tenant plede matter en barre qui n'eſt pas ſufficient, et le plaintif face bon title, il ne répledera coment que l'iſſue ſoit pris ſur le title: car touts dits s'il ad bon title, ceo ſuffiſt pur le plaintif, et le non ſufficiency de la barre ne fera eux repleder. Mes autrement eſt de title ſi le plaintif
f. 6. luy face title que ne vault, et iſſue eſt pris; ſur ceo les parties repledent: car covient a le plaintif aver ſufficient title a aver ſon Aſſiſe touts dits: et iſſint touts dits ſi le title ne vault, et iſſue pris ſur ceo, ils repledent: mes autrement eſt de barre. Mes le cas icy eſt autre, car le title icy eſt ſufficient, et le plaintif rejoinde ſufficient en meintenance de ſon title; et ouſtre il ad pris iſſue que n'eſt a purpos. Or eſt a voir le quel par le priſel de l'iſſue il ad refuſe ſon title ou nemy; mes tout ceſte matter voile aver liſer et ſpace eſtre bien examine. Et pur ceo gardes votre jour le Vendredie prochein apres les Octabes de S. Hillaire icy en meſme la Place. **Forteſcue** dit en ceſt Aſſiſe (pur ceo qu'il fuit move que le ple a le title fuit double, et ceo ſera bon cauſe que ils repledent;) et dit que quand un home plede un double ple, on ne poit demurrer pur le non ſufficiency: car le ple eſt aſſes ſufficient et plus: et pur ceo il y ad ij matters, et cheſcun d'eux eſt un mater, mes s'il demurre ſur le doublenes &c. Car s'il voile reſpondre a un, il reliera ſur luy, pur ceo que il ne reſponde a l'auter; car a deux ſeveralx matters nul Ley veut mettre a reſpondre ſans le plus eſpecial matter &c.: et la cauſe eſt, que on demurre ſur double ple: car s'il voile reſponde a un, et iſſue pris ſur ceo, et ceſt matter trie, ceo eſt ſufficient: car par le prendre de l'iſſue ſur un le doublenes eſt waive, et ceo prove bien que le matter eſt ſufficient, quand un poet faire fin de tout. Mes s'il voile reſpondre a un, l'autre voille demurrer ſur luy, pur ceo que il ne reſpondra a l'autre, ceſt la cauſe que on demurre ſur double ple. *Quod nota.* Et ſic vide, que on n'eſt tenu a reſpondre a double ple *cauſa qua ſupra* &c.

De Termino Hillarii, Anno xxxvij. Hen. VI.

f. 14 b. Aſſiſe fuit porte devant **Sir J. Forteſcue** et Davers en l'Eſchequer Chambre. Wangford plede en barre, que un brief de Dower fuit porte par un Eſtranger qui eſtat le tenant ad, et pleda que autrefois en "le premier jour de May l'an," &c. un tiel porta de

therefore it is altogether a jeofail: for if the iſſue be taken on the title, which is not any iſſue but only a jeofail, it ſhall be in another action; wherefore it ſeems to me that they ſhall re-plead. **Forteſcue**: As to what he has ſaid, that the tenant has departed from his bar, and alleges ſufficient matter in maintenance of his bar; and moreover has alleged that he was ſeiſed until diſſeiſed by the plaintiff, which is a new matter: he has thus fortified his matter in bar, and has added further matter thereto; and ſo it is not merely as a departure from his bar; and the plaintiff has maintained his bar. And furthermore, he has taken a traverſe which is not to the purpoſe: but whether they ſhall re-plead or not is to be ſeen; for I know well that if in any Aſſize the tenant plead matter in bar which is not ſufficient, and the plaintiff make a good title, they do not re-plead, although the iſſue be taken on the title; for always, if he has good title, this is ſufficient for the plaintiff, and the non-ſufficiency of the bar ſhall not make them re-plead. But it is otherwiſe of t tle, if the plaintiff make to himſelf a title which is worthleſs, and iſſue is taken; thereon the parties f. 6. re-plead; for the plaintiff muſt have ſufficient title to have his Aſſize always; and ſo, always, if the title is not good, and iſſue is taken thereon, they re-plead: but it is otherwiſe of a bar. But the preſent caſe is otherwiſe; for the title here is ſufficient, and the plaintiff's rejoinder is ſufficient in maintenance of his title; and moreover he has taken an iſſue which is not to the purpoſe. Now we have to ſee whether, by the taking of the iſſue, he has refuſed his title or not; but all this matter requires leiſure and time for inquiry. And therefore keep your day on Friday next after the octaves of S. Hilary, here in the ſame place. In this Aſſize **Forteſcue** ſaid (becauſe it was moved that the plea to the title was double, and this ſhall be a good cauſe that they re-plead,) that when one pleads a double plea one cannot demur for non-ſufficiency; for the plea is ſufficient enough and more; becauſe there are two matters, and each of them one matter; but if he demur on duplicity &c. For if he will anſwer to one, he ſhall rely upon it, becauſe he does not anſwer to the other; for to two ſeveral matters no law will put one to anſwer without the moſt ſpecial matter &c.; and the reaſon is, that one ſhall demur on a double plea; for if he will anſwer to one, and iſſue is taken thereon, and this matter is tried, this is ſufficient; for by the taking of the iſſue on one, the duplicity is waived; and this proves that the matter is ſufficient, when one [iſſue] can make an end of all. But if he will anſwer to one, the other will demur on it, becauſe he will not anſwer on the other; and this is the reaſon why one ſhall demur on a double plea. Note this. And ſo ſee that one is not bound to anſwer to a double plea, for the reaſon above, &c.

Hilary Term, 37 Hen. VI.

An Aſſize was brought before **Sir J. Forteſcue** and Danvers in the Exchequer f. 14 b. Chamber. Wangford pleaded in bar that a writ of "Dower" was brought by a ſtranger whoſe eſtate the tenant has, and he pleaded that heretofore, on the firſt day of May, in the

brief de Dower; ceo eſt la forme de pleading en Inns de Chancery; mes la forme n'eſt bon, que ſuffiſt a dire que autrefois un porta brief de Dower, et ne monſtre nul jour. Et s'il voille monſtrer jour, donque autrefois ſi un tiel porta brief de Dower, ceo brief porta date tiel jour: car il poit faire le ſuite puis le brief divers jours; uncore en le brief il n'eſt forſque un jour, et le jour appert per le brief, et pur ceo il ne beſongne monſtrer hors. *Quod nota.* Purque il amende ſon pleading, et dit que il fuit tiel brief en Dower portant date tiel jour vers ceux, et demanda par ſon brief ſon reaſonable dower de toutes les terres et tenements qui furent a ſon baron en meſme la ville, ils adonq eſteants tenants, le brief directe a le Viconte de M. retornable icy a Weſtminſter devant Sir J. PRISOT et ſes compagnons. **Forteſcue:** Ceo n'eſt bon: car le brief n'eſt retornable devant Sir J. PRISOT, eins devant les Juſtices de la Common Place: et quand le Viconte retorne le brief la, ſera devant Sir J.
f. 15. PRISOT et ſes compagnons; car coment que Sir J. PRISOT ſoit Juſtice a le temps de brief purchace, ne enſuiſt que il ſera a le temps de returne; car un autre poit eſtre adonque. WANGFORD plede par le forme &c. &c. &c.

Brief de Error fuit ſue vers deux Abbes par les adminiſtrators d'un J. M. en l'Eſcheker Chambre devant le Chanceler, et devant les Barons, &c. accordant a le Statut fait l'An le roy E. 3. 31. ca. 12, que veut que les errours ſoient reverſes en l'Eſcheker Chambre devant le Chanceler et le Treaſorer, appellant a eux les Juſtices. Et le record fuit leu, que veut que l'adminiſtrators avoient ſue un bille de Debte ſur un taile en le Eſcheker vers les Abbes or defendants collectours d'un diſme et quinzime, de ceo que tiel jour et an, les plaintifs avoient un taille de xl. livres hors de l'Eſchequer directe a's dits Abbes collectors a delivrer a eux les dits xl. livres et a eux offrir ſufficient acquitance, a quel temps il ont ſufficient en lour mains, et ne voillent delivrer; et iſſint action accruſt entre eux. A que les dits Abbes vindrent et diſent, que action ne &c.; car ils diſoient que long temps devant le jour que le taille fuit livre a eux per les adminiſtrators, le Maior d'eſtaple ſuit brief directe a eux contenant tiel matter; que a le Parliament noſtre Segnior le roy tenu ci a Weſtminſter l'an &c.,[1] que come les Maiors et Conſtables de l'Eſtaple avoient pris a noſtre Seignior le roy x. m. marcs a paier les ſoldats de Caleis, le roy granta per autorite de meſme le Parliament, que les dits Maior et Conſtables reauront les dits x. m. marcs de la dit diſme et quinſiſme, et que tout le aſſignement fait ou a faire pur [puis?] tiel jour, ne ſera levie tanque le dit Maior eſt ou ſoit ſatisfie de les dits x. m. marks, et que touts les faits ou aſſignements faits et directs a's collectours de la diſme et quiniſiſme ſoient voids, et nient levables tanque le dit Maior ſoit ſatisfie, s'il ne ſoit pur monnoie apprompt au roy; et que le Chanceler pur le temps eſtant eit ſufficient pouvoir a faire tants des briefs a's dits collectours pur le Maior, et que ſont neceſſaires a eux

[1] See Rot. Parl. v. 249 *a*.

year &c such an one brought a writ of "Dower." This is the form of pleading in the Inns of Chancery; but the form is not good; for it suffices to say that "heretofore one brought a writ of 'Dower,'" and without specifying any day. And if he wished to show the day, then "heretofore such an one brought writ of 'Dower,' and this writ bore date on such a day;" for he can make suit for divers days after the writ; and still in the writ there is only one day, and the day appears by the writ, and therefore it is not necessary to point it out. Which note. Wherefore he amended his pleading, and said that there was such writ of "Dower," bearing date on such a day against them, and [that she] demanded by the writ her rightful dower of all the lands and tenements which were her husband's in the same town, they then being the tenants; and the writ was directed to the sheriff of M., returnable here to Westminster before Sir J. Prisot and his companions. **Fortescue**: This is not good; for the writ is not returned before Sir J. Prisot, but before the Justices of the Common Place; and when the sheriff returns the writ there it will be before Sir J. Prisot and his companions; for although Sir J. Prisot was Justice at the time of obtaining the writ, it does not follow that he shall be so at the time of the return; for another might then be [Justice]. Wangford pleaded by the form &c. &c. f. 15

A writ of "Error" was sued against two Abbats by the administrators of one J. M. in the Exchequer Chamber before the Chancellor and the Barons &c. according to the statute made 31 Edw. III. cap. 12, which requires that errors be reversed in the Exchequer Chamber before the Chancellor and the Treasurer, calling to them the Justices. And the record was read, setting forth that the administrators had sued a bill of "Debt" on a tally out of the Exchequer against the Abbats, the now defendants, collectors of a tenth and fifteenth, for that on such a day and year the plaintiffs had a tally of forty pounds out of the Exchequer, directed to the said Abbats, collectors &c., to deliver to them the said forty pounds, and for them to give to the Abbats a sufficient acquittance; at which time they had sufficient in their hands, but would not deliver; and so an action arose between them. To which the said Abbats came and said that an action ought not, &c. For they said that long before the tally was delivered to them by the administrators, the Mayor of the Staple sued a writ directed to them, containing such matter; that at the Parliament of our Lord the King holden here at Westminster, in the year &c., whereas the Mayor and Constables of the Staple had lent to our Lord the King 10,000 marks, to pay the soldiers of Calais, the King granted by authority of the same Parliament, that the said Mayor and Constables should have again the said 10,000 marks from out of the said tenth and fifteenth, and that any assignments made or to be made after such day should not be levied until the said Mayor is, or should be satisfied the said 10,000 marks; and that all the deeds and assignmen s made and directed to the collectors of the tenth and fifteenth, be void, and not leviable, until the said mayor be satisfied; unless it be for the money lent to the King: and that the Chancellor for the time being should have full power to make so many writs to the said

tanque &c. Et il commanda eux per meſme le brief a paier a le dit Maior iv. c. livres de la dit diſme et quinziſme, et que le Maior fera a aux ſufficent acquitance: et dit que le dit Maior offrit a eux ſufficient acquitance, et puis, devant le dit taille, le Duc de York porta un taille de c. livres, directe a eux [pur] le quel eux offrit acquitance, et que les pleintifs vindrent ove lour tailles, et diſoient que ouſtre les iv. c. livres[1] ils n'avoient rien en lour mains. Et l'adminiſtreurs demurrerent ſur ceſt matter; et agarde fuit en l'Eſchequer per les Barons que ils ſeront barres. Et de ceo or ils portent breve d'Error, et aſſignent l'errour en ceo que ils agarderent que les pleintifs ſerroient barres, ou ils deveroient agarder que ils recoveront; car le ple en barre eſt double, et enſement le ple ne vault. En primes il eſt double matter par cauſe de l'Act de Parliament, que nul taille ou aſſigne-
f. 15 b. ment ſera admis, allowe, ou profere tanque le Maior &c.; le quel eſt ſufficient mattere; et que le payment al' Duc de York, et que ils n'avoient rien ouſtre ceo; et Sir, le ple n'eſt bon; car l'Act eſt *ut ſupra*, "que nul homme ſera ſervi tanque le Maior &c. ſoit ſatisfie:" donq puiſſent bien les collectors aver barre le Duc de York des ces c. livres, et per cauſe de le dit Act ils ne voillent, mes paia al' dit Duc, le quel ſera dit ſans garrantie, et donc ſont les c. livres en lour mains; et par conſequens ſuffiſt pur xl. livres: et enſement n'y ad nul Act en le Parliament en fait forſque un rehercel, le quel ne poit etre bon; car s'il ſoit nul tiel Act, donq eſt le paiement ſans garrantie; quod YELVERTON. Le Chief Baron diſoit que le ple ne vault pur autre cauſe &c., pur ceo que le Act eſt conditionel, "tanque le Maior fuit ſatisfie de x. M. marcs," et n'ont ſurmis en fait que les dits x. M. marcs furent uncore a paier. Sicome le roy grante un annuite pur terme d'autre vie a prendre de le cuſtome de tiel lieu, et le Roy grante un autre annuite a prendre de meſme le cuſtome; or ſi j'ay une "Deliberate" purque il portera un bille de Dette vers eux, ceo n'eſt pur eux adire que Jeo avois un "Deliberate" directe a eux. Et coment ils n'avoient rien en lour mains; mes ouſtre ceo il covient a eux monſtrer coment ceſty a qui vie l'annuite fuit granté eſt uncore en pleine vie, ou autrement ils ne ont cauſe a paier a luy les dits iv. c. livres, purque ils devront ſurmettre en fait que ils ſont a paier uncore, autrement ne vault. Purque [&c.] **Fortescue:** Quant a ceo le ple eſt aſſy bon, et n'eſt ſemblable a votre cas qui n'eſt que matter en fait, le quel covient eſtre ſurmis en fait, ou autrement ne vault: mes icy s'ils n'ont rien affaire (ou s'ils ſont paies ou nemy) mes alower le "Deliberate." Sicome nous qui ſumus Juſtices ont a paier de noſtre ſalaire, ceo ſufficient garrantie pur luy coment que nous ne ſumus paies a devant: car lequel nous ſumus paies adevant ou nemy, ceo n'eſt a purpos a luy. Et iſſint fuit l'Opinion de la Court. Et quant a ceo que YELVERTON dit, que il covient ſurmettre en fait que il y ad tiel Acte, ceo ne fera force: car ſuffiſt a luy que le brief,

[1] Fitzherbert's Abridgment (Dette 62) has *500l.*; and correctly.

collectors for the mayor as should be necessary for them, until &c. And he commanded them by the same writ to pay to the said Mayor 400*l.* out of the said tenth and fifteenth, and that the said Mayor should give them a sufficient acquittance. And he said that the said Mayor offered them a sufficient acquittance; and then, and before the said tally, the Duke of York brought a tally for 100*l.* directed to them, and offered them an acquittance; and that the plaintiffs came with their tallies: and they said that beyond the 500*l.* they had nothing in hand; and the administrators demurred in that matter: and it was adjudged by the Barons in the Exchequer that they should be barred. And thereupon they now bring a writ of "Error," and assign error in that they adjudged that the plaintiffs should be barred, when they ought to have adjudged that they should have recovered; for the plea in bar is double, and also the plea is of no avail. And first, it is a double matter, by reason of the Act of Parliament, which says that no tally or assignment shall be admitted, allowed, or proffered until the Mayor &c.; which is a sufficient matter; and [then there is the plea of] f. 15 b. payment to the Duke of York, and that they had nothing beyond that. And Sir, the plea is not good; for the Act is (as above) that no one shall be served until the Mayor, &c. be satisfied; then, the collectors might well have barred the Duke of York of those 100*l.* by reason of the said Act; but they would not, but paid the said Duke; which payment shall be held as without warrant; and so the 100*l.* are in their hands; and consequently there is sufficient for the 40*l.* Likewise there is, in fact, no Act of Parliament, but only a recital, which cannot be effectual; for if there be no such Act, there is the payment without warrant. This is what YELVERTON said. The CHIEF BARON said that the plea is not good for another cause, because the Act is conditional, viz., "until the Mayor be satisfied the 10,000 marks;" and they have not surmised in fact that the said 10,000 marks were yet unpaid;—as if the King grant an annuity "pur autre vie," to be taken out of the customs of such a place, and the King then grant another annuity to be taken out of the same customs: now if I have a "Deliberate," and he [the second annuitant] bring a bill of Debt against them, it is no plea for them to say that I had a "Deliberate" directed to them, and how they had nothing in hand; but besides that, they must show that he for whose life the annuity was granted is still alive:— otherwise they have no cause to pay the 400*l.*; wherefore they ought to surmise in fact that they are yet unpaid, or otherwise it is of no avail. Wherefore [&c.] **Fortescue:** As to that, the plea is good enough, and it is not similar to the case which you put, which is only matter in fact, which must be surmised in fact, or otherwise it is of no avail: but here, they have nothing to do (whether they are paid or not) but to allow the "Deliberate." As in the case of us who are Justices, they have to pay our salary; and that is sufficient warrant for them, although it may be that we are paid before; for whether we are paid before or not does not concern them. (And this, too, was the opinion of the Court.) And as to what YELVERTON said, that it is necessary to surmise in fact that there is such an Act; this does not hold good; for it suffices that the writ

reherſe tiel Acte : car le quel il ad tiel Acte ou nemy, ceo n'eſt a purpos a eux. Purque. Et a le premier point, que le ple ſera double, il eſt aſſez ſingle : car il ad monſtre que il ad en ſes mains iv. c. livres,[1] et que le Maior avoit brief directe a luy pur iv. c. livres, et iſſint remaine en lour mains c. livres des queux ils ſont charges par eigne "Deliberate" que ceo eſt, et ouſtre ceo ilz n'ont rien, ne puiſſent aver melour ple. PRISOT dit, que com que tiel Act' eſt, "que nul aſſignement ſera levie tanque," &c. uncore quand le Duc d'Everwike monſtra a luy un aſſignement de c. livres le quel remaine en lour mains, et offrit a eux acquitance, ils ſont charges a luy ; et coment que l'Acte eſt, "que il ne ſera levie tanque" &c. uncore apres le paiement fait a le Maior il covient que il paye le Duc, et iſſint eſt charge a le Duc loialment ; en quel cas il ne puiſſoit meliour aver plede. Purque &c.

De Termino Paſchæ, Anno xxxvij. HEN. VI.

f. 21. Reſiduum del cas R. Quatermeins, An. 36 H. 6, fo. 24, en l'Eſcheker Chambre.

f. 21 b. [BOEF, CHOKE, GREENFIELD, and others give opinions.] WILBY: Le contrary. Et a ceo que eſt dit que le chartre ſera pris plus fort en avantage du Roi que il poit eſtre, et plus fort encontre le party, et que rien paſſera hors du roy ſinon par expres paroles ; ceo eſt voier en [aſcun cas, e en] aſcun nemy, ſcavoir ou la party ſue un eſpecial chartre de pardone, la il covient aver expres paroles, et certifier le roy plenerly de choſe dont il voile aver ſon chartre, et la covient que le roy ſoit appris per expres paroles et nemy per obſcures paroles, et la ſera le chartre pris et conſtrue plus en avantage le roy, et plus en diſadvantage de party, pur ceo que ceſt ſuite vient ſolement de ſa ſuite demeſne. Mes iſſint n'eſt icy, car le chartre vient du roy meſme et de ſon eſpecial grace ſans ſuite ou meſne del' party, eins *mero motu regis*, et ceo parcon ſera pris plus beneficial pur la party, pur ceo que le Ley entende que le roy eſt appris de

f. 22. choſe pardone per expres paroles ſibien come per expres paroles en eſpecial Charter : et iſſint diverſite perenter eſpecial pardon et general. *Quod* MARKHAM *et alii Juſticiarii conceſſerunt*. . . . . Et Sir, a ceo que eſt dit par Mon maiſtre CHOKE, entant que ceſt choſe eſt uh duty accrue au roy, et n'y ſont nules paroles en le chartre a pardoner ceſt faux retorne ; et ſi ceſt faux retorne ne poit eſtre entendu par les parolx en le dit chartre contenus &c. ſcavoir "offences," &c. Donque c'eſt ſufficient : quar ſi le tranſgreſſion ſoit par cauſe del' amerciment et pardone, *ergo per conſequens* l'amerciment erronious. *Quod conceſſerunt Juſticiarii.* Et quant de ſurceſſer de ſon temps et que le Viconte poit eſtre de ceo aſſerte aſſez bien, pur ceo que ceo eſt de ſon retorne demeſne, et de ſon fait demeſne, il poit bien prendre conuſance : Sir, en ceſt cas il n'ad ſurceſſe ſon temps, le Viconte ne poit eſtre appris de ceo devant or ; car nientobſtant le retorne fuit ſon fait demeſne, ceo ne fuit appurpos a luy uncore ; car ſon

[1] Fitzherbert's Abridgment has 500*l.* ; and correctly.

recites such an Act; for whether there is such an Act or not does not concern them. Wherefore &c. And on the first point, that the plea is double; it is single enough; for he has shown that they have in hand 500*l.*, and that the Mayor had a writ directed to him for 400*l.*; and so there remain in their hands 100*l.* with which they are charged by an elder "Deliberate" than that was; and beyond this they have nothing; and they could not have pleaded better. PRISOT said that although the Act is, "that no assignment shall be levied until" &c., still when the Duke of York showed to him an assignment for 100*l.*, which remained in their hands, and offered to them an acquittance, they were charged to him; and although the Act is that "it shall not be levied until" &c., still, after the payment made to the Mayor, he must pay the Duke; and so it is charged legally to the Duke; in which case he could not have pleaded better. Wherefore &c.

Easter Term, 37 HEN. VI.

The rest of the case of R. Quartermains, Anno 36 Hen. VI. f. 24, in the Exchequer Chamber. [BOEF, GREENFIELD, and others give opinions.] WILBY: The contrary. And as to what has been said that the charter shall be taken as strongly as possible in favour of the King, and strongly against the party, and that nothing passes out of the King except by express words; this is true in some cases, and in others not; viz. where the party sues a special charter of pardon, there there must be express words, and the King must be fully certified of the thing in respect of which he wishes to have the charter; and there, also it is necessary that the King be informed by express words and not by obscure words; and in such case the charter shall be taken and construed most in favour of the King, and most to the disadvantage of the party; because this suit comes solely from his own suit. But it is not so in this case; for the charter comes from the King himself of his special grace without suit or means of the party, but of the King's mere motion; and this pardon shall be taken most beneficially for the party; because the law supposes that the King is informed of the thing pardoned by express words, as well as by express words in the special charter; and so there is a distinction between special and general pardon. To which MARKHAM and other Justices agreed. . . . And, Sir, as to what is said by my Master CHOCK, that inasmuch as this thing is a duty accrued to the King, and there are no words in the charter to pardon this false return, and so this false return cannot be understood as being within the words contained in the said charter, to wit "offences &c.;" [even] then, it [the charter] is sufficient; for if the trespass be the reason of the amercement and be pardoned, then, by consequence, the amercement is erroneous. And to this the Justices agreed. And as to surceasing his time, and that the sheriff might have been well certified of this, because it is his own return, and of his own act he can well take cognizance; Sir, in this case he did not surcease his time; for the sheriff could not be informed of this before; for notwithstanding that the return was his own act, this matter was not yet brought to his notice; for his return was good and legal after

f. 21. f. 21 b. f. 22.

retorne fuit bon et loyal apres deux ans, tanque les Coroners certifient le record que fuit utlage; et ceo ne fuit le fait le Viconte, eins de ſes Coroners, de quel il ne puiſſe aver conuſance devant que il ſoit garni de ceo, et il n'ad ſurceſſe ſon temps: car il n'avoit unques temps pur pleder ſon chartre devant or. Car devant le record certifie par les Coroners, il ne poit pleder ſon chartre, car nul tranſgreſſion ne defaut appert, ne fuit en le Viconte devant le certification des Coroners; et tantoſt come les Coronerz avoient certifie, meſme le terme les Juſtices luy amercerent et l'amercerent aſſeſſerent et le mir[ent] en l'Eſchequer, iſſint ne poit il aver avantage de ſon Chartre devant or, car devant il ne purra aver conuſance de ceo matter, et tantoſt come il avait conuſance il face come la Ley veut. **Forteſcue:** Paraventure, s'il uſt venu devant nous devant le certificacion des Coronerz, et porte ſon chartre et monſtre a nous que il avoit fait un faux retorne, et pria aide de chartre, nous luy eiderions: car ſi un ſoit endite devant nous in Pais, et ſi l'endité devant aſcun proces agarde vers luy vient devant nous, et monſtre le chartre du Roy, nous luy eiderons ſibien come il
f. 22 b. uſt venu per proces: iſſint icy. [Moile, Danvers, and others follow.] **Forteſcue:** Ceſt verite, un amerciment eſt plus petit tranſgreſſion que poit eſtre, mes ſont general amerciments qui ſont aſſeſſes par le ſerment de xij homes, et ſont eſpecials amerciments qui ſe ſont aſſeſſes officialment par nous Juſtices, c'eſt un. *Quod nota.* Et uncore eſt diverſite pare itre amerciment et un fine; car ſur un fine la party avoit tout temps jour a mettre eins ſon pleges pur ſon fine, et iſſint ne ſera amerciment. *Nota bene* le diverſite. *Et opinio Omnium Juſticiariorum,* que le party aura avantage per ſa chartre. *Et adjournantur in Banco* &c. &c. *Principium* An. 36 H. 6. fol. 25.

De Termino Michaelis, Anno xxxviii. Hen. VI.

f. 3. Et un brief d'Error en Bank le Roy, le plaintif aſſigna pur error, que ou en brief d'Entre *in conſimili caſu* le tenant dit que il ne aliena en fee, et le plaintif maintint ſon brief que il aliena en fee, preſt; ou le tenant duiſſoit aver dit que il ne aliena, preſt; et l'auter auroit rejoint que il aliena, preſt. **Forteſcue** dit, que l'iſſue ne poit eſtre melior pris: car adire que il ne aliena pas, et l'autre que il aliena, ceo ne vault: car ceſt iſſue poit eſtre trove ove le demandant, et uncore il ne recovera rien, car poit eſtre que le tenant aliena ſon eſtat, come bien poit faire: donque ceo eſt trove pur le demandant que il aliena; et uncore il n'ad cauſe d'action; donque a prendre tiel iſſue que poit eſtre trove pur le demandant: et uncore il n'aura ſon Jugement, ceo ſera en vain. Mes il ad fait melior; car il dit que il ne aliena pas en fee, et le demandant dit que aliena en fee; ceſt eſt bon iſſue, et accordant a l'eſtat et al brief, et ceſte alienacion en fee ſera dit tiel alienacion que eſt a la diſenheritance le demandant: purque me ſemble l'iſſue bon. . . . Pole: Me ſemble le contrarie. . . .

two years, until the coroners certified the record of outlawry; and this was not the act of the ſheriff, but of his coroners, of which he cannot have cognizance before being warned thereof; and he has not ſurceaſed his time; for he had never time to plead his charter before. For before the record certified by the coroners, he could not plead his charter; for no treſpaſs or default appears or exiſts in the ſheriff before the certificate of the coroners; and as ſoon as the coroners had certified, in the ſame Term the Juſtices amerced him, and aſſeſſed the amercement, and ſent it into the Exchequer, ſo that he could not have advantage of his charter before; for, before that, he could not have cognizance of the matter; and as ſoon as he had cognizance, he did as the law requires. **Forteſcue:** Perhaps, if he had come before us, before the certification by the coroners, and had brought his charter and ſhowed to us that he had made a falſe return, and prayed aid of the charter, we ſhould have aided him: for if one be indicted before us in Pais, and the indictee, before award of any proceſs againſt him, come before us and ſhow the charter of the King, we will aid him as well as if he had come by proceſs: ſo here. [Moile, Danvers, and others follow.] **Forteſcue:** It is true, an amercement is the ſmalleſt treſpaſs that can be; but there f. 22. b.
are general amercements which are aſſeſſed by oath of twelve men; and there are ſpecial amercements which ſhall be aſſeſſed officially by us who are Juſtices, and this is one. (Note this.) And ſtill there is a diſtinction between an amercement and a fine; for on a fine the party ſhall always have a day to put in pledges for his fine; and on an amercement it ſhall not be ſo. Note the difference. And it is the opinion of all the Juſtices that the party ſhall have advantage by his charter. Adjourned in Banco &c. &c. [The beginning of the above caſe is in 36 H. 6, f. 24.]

Michaelmas Term, 38 Hen. VI.

In a writ of "Error" in the King's Bench, the plaintiff aſſigned for Error, that whereas in f. 13.
a writ of "Entry" *in conſimili caſu*, the tenant ſaid that he did not alienate in fee, and the plaintiff maintained his writ, viz. that "he did alienate in fee; ready &c.," the tenant ought to have ſaid that he did not alienate; ready &c.; and the other ought to have rejoined that he did alienate; ready &c. **Forteſcue** ſaid, that the iſſue could not be taken better; for to ſay that he did not alienate, and the other that he did alienate, is of no avail; for this iſſue may be found for the demandant, and yet he ſhall recover nothing; for it may be that the tenant alienated his eſtate, as he could well do; then it is found for the demandant that he alienated; and ſtill he has no cauſe of action; then, to take ſuch iſſue that can be found for the demandant, and ſtill that he ſhall have no judgment, would be uſeleſs. But he has done better; for he ſays that he did not alienate in fee; and the demandant ſays that he did alienate in fee; and this is a good iſſue, and accordant with the eſtate and the writ; and this alienation in fee ſhall be called ſuch an alienation as is to the diſheritance of the demandant. Wherefore it ſeems to me that the iſſue is good. . . .

f. 3 b. YELVERTON: A meſme l'entent. . . . . **Forteſcue:** Semble que ceo eſt bon Ley en voſtre cas de *Dum fuit infra ætatem*, adire que il ne aliena pas, et ſi trove ſoit que il aliena, le quel eſtat que il ſoit, eſt ſufficient pur le demandant: mes iſſint n'eſt icy, car coment que il trove eſt icy que il alliena ſon eſtat, il ne recovera james; et pur ceo lez caſes ne ſont ſembles: et pur ceo covient a le tenant adire que il ne aliena pas en fee, et le demandant maintenir que il aliena en fee, et nemy tant ſolement que il aliena, mes que il aliena en fee. Et en pluſors caſes covient a le demandant a traverſer tout ceo que eſt allege per le tenant, coment que il y avoit deux ou trois matters. Sicome en brief de "Coſinage" ſi le tenant dit que ceſt coſin de qui poſſeſſion il ad port ſon action, ad iſſue un J. qui luy ſurveſquiſt de qui poſſeſſion il covient porter ceſt action, le demandant dira que ceſt coſin navoit tiel iſſue que luy ſurveſquiſt et fuit ſeiſi; tout ceo il aura en ſon ple. Et iſſint ſera en pluſors caſes ſemblables: et iſſint icy le tenant dira que il ne aliena pas en fee, et le demandant maintiendra que il ne aliena en fee, et ceſte iſſue ſera entendu toutes alienacions a ſon diſinheritance. *Et adjournatur.* (*Reſiduum*, f. 11.)

En brief d'Entrie *ubi ingreſſus non datur per Legem* par un home, Le defendant pleda en barre. Et le plaintiff replie; et appert par ſa replication, que le plaintif n'avoit rien ſinon en droit ſa femme, et puis l'iſſue trove pur le plaintif. Et or le plaintif pria ſon Jugement. Et le defendant dit que a le Jugement ne deves aler, pur ceo que appert par la replicacion que il n'ad rien ſinon en droit ſa feme; en quel cas ele doit eſtre nome ove luy; le quel matter appert par ſa replicacion demeſne, et il appert que ſon brief eſt en ſon nom ſole enterleſſant ſa feme. Jugement, ſi &c. Et le plaintif pria ſon Jugement pur riens que il ad dit: car ceſt action giſt de terres en droit ſa feme en ſon nom ſole, car ceo n'eſt forſque action perſonel, et nule franktenement ſera recovere mes tant ſolement damage; come en brief de tranſgreſſion a la Comon Ley, le quel giſt pur le baron entreleſſant ſa feme. Et Sir, en pluſors autres caſes que ceo eſt: car "Quare impedit" giſt pur le baron entreleſſant ſa feme, et uncore la il recovera le preſentment, et icy il ne recovera forſque damages. Et le defendant dit, que nient ſemblable le cas de "Quare impedit," car le "Quare impedit," eſt
f. 4. done forſque pur le diſturbance, et le avoidance eſt un title a le baron ſole et veſte en le baron, et le baron preſentera coment que ſa feme moruſt ſans iſſue, et puis alera a les executors et iſſint ne fera ceſte action; car ceſt action trenche en le droit l'enheritance et le droit ſera trie par ceſt action, a quel covient que la feme ſera party. Sicome en "Detinue de chartres" concernantes l'enheritance la feme, l'action ſera porte par le baron et ſa feme, et nemy par le baron; et uncore ceo eſt perſonele action: mes la cauſe eſt pur ceo que les chartres touchent l'enheritance la feme, et la ele covient eſtre nome. Et meſme

Pole: The contrary appears to me. . . . Yelverton: To the ſame purport. . . . Forteſcue ſaid: It appears that it is good law in your caſe of a *Dum fuit infra ætatem*, to ſay that he did not alienate, and if it be found that he did alienate, whatever the eſtate may be, it is ſufficient for the demandant: but it is not ſo here; for although it be found here that he alienated his eſtate, he ſhall never recover; and therefore the caſes are not ſimilar; and therefore the tenant muſt ſay that he did not alienate in fee, and the demandant muſt maintain that he did alienate in fee; and not only that he alienated, but that he alienated in fee. And in many caſes the demandant has to traverſe all that is put forward by the tenant, although there be two or three matters. As in writ of "Coſinage" if the tenant ſays that this couſin on whoſe poſſeſſion he has brought his action, had iſſue one J., who ſurvived him, on whoſe poſſeſſion he muſt bring this action, the demandant ſhall ſay that this couſin had not ſuch iſſue who ſurvived him and was ſeiſed; all this he ſhall have in his plea. And ſo it ſhall be in many ſimilar caſes: and ſo here the tenant ſhall ſay that he did not alienate in fee, and the demandant ſhall maintain that he did alienate in fee; and this iſſue ſhall be underſtood of all alienations to his diſinheritance. Adjourned. [The remainder of the caſe is at f. 11.]

In a writ of "Entry," "where entry is not given by law," the defendant pleaded in bar; and the plaintiff replied; and it appeared by his replication that the plaintiff had nothing except in right of his wife; and afterwards the iſſue was found for the plaintiff. And now the plaintiff prayed his judgment. And the defendant ſaid that he ought not to go to judgment; for it appears by the replication that he has nothing except in right of his wife; in which caſe ſhe ought to be named with him; which matter appears by his own replication, and it appears that his writ is in his name alone, leaving out his wife: judgment, whether &c. And the plaintiff prayed his judgment notwithſtanding anything that he (the defendant) has ſaid; for this action for lands belonging to him in right of his wife lies in his name alone; for it is only a perſonal action, and no freehold will be recovered, but only damages; as in a writ of Treſpaſs at the common law, which lies for the huſband, leaving out his wife. And, Sir, in many other caſes is it as in this; for a "Quare impedit" lies for the huſband, leaving out his wife; and ſtill in that caſe he ſhall recover the preſentation; and here he only recovers damages. And the defendant ſaid that the caſe of a "Quare impedit" was not ſimilar; for the "Quare impedit" is only given for the diſturbance, and f. 4.
the avoidance is a title to the huſband alone, and veſts in the huſband, and the huſband ſhall preſent although his wife die without iſſue; and then it ſhall go to the executors: and this action ſhall not do ſo; for this action trenches on the right of the inheritance, and the right ſhall be tried by this action to which the wife muſt be a party. As, in "Detinue of Charters" concerning the inheritance of the wife, the action ſhall be brought by the huſband and his wife, and not by the huſband alone: and yet this is a perſonal action; and the reaſon is becauſe the charters concern the inheritance of the wife; and in ſuch action ſhe

la Ley de "Forgement des faux faits" il ſera porte par ambideux: et iſſint ſemble icy. Le plaintif negat le cas de "forger de faux faits:" car il dit que il ſera porte par le baron entreleſſant ſa feme. *Quod nota.* **Forteſcue:** Le cas de "Quare impedit" eſt bon cas a prover ceſt cas: et Sir, en action de "Detinue des chartres" concernants l'enheritance la feme, eſt voier que l'action ſera porte par le baron et ſa feme, pur ceo que ils ſont a recoverer les chartres qui touchent l'enheritance la feme: mes ſi brief de "Treſpas" ſoit porte des chartres touchantes l'enheritance la feme, ceo ſera porte par le baron entreleſſant ſa feme, pur ceo que il n'eſt a recoverer les chartres touchantes l'enheritance la feme, mes ſolement damages pur eux: et iſſint diverſitie perentre ceux actions. *Quod nota.* Sir, ſi un tenant poit aver ceſt action ſur le ſtatut, ſemble adonque que le baron aura ſans ſa feme. *Et adjornatur. Et ad alium diem* le plaintif vint a la barre, et pria ſon Jugement. Et a le derrein le plaintif avoit Jugement a recoverer &c.

De Termino Hillarii, Anno xxxviij. Hen. VI.

f. 19 b. Le cas fuit tiel en le Chancery. Un Abbe avoit ſue en Court Chreſtean un "Spoliacion" vers un R. clark, et un H. clark, de ceo que l'ou le dit Abbe et touts ſes predeceſſors ont eſte ſeiſis de l'advowſon de J. et enſement de l'Eſgliſe come Parſon enparſone a tenir en propre uſe, de temps dont memory ne court, et avoit ew touts les diſmes &c. la vindrent les avant dits H. & R. et luy avoit ſpoile de ſes diſmes, et luy tenu hors de ſa Eſgliſe, et priſt les diſmes. Et ſur ceo apparurent les avant dits H. & R. et diſoient que un [tiel] fuit ſeiſi de l'advowſon avandit come en droit d'un tiel ſa feme, en ſon demeſne come de fee, et ouſtre ceo, coment l'anceſtor la feme fuit ſeiſi devant luy, et coment le baron preſenta le dit R. qui a ſon preſentment fuit admis, inſtitute et induĉte, et priſt les diſmes et tenoit l'Eſgliſe come Parſon et Incumbent le dit baron tanque il reſigna &c.; et puis le dit baron preſenta le dit H. qui a ſon preſentment &c. et tenoit l'Eſgliſe, et priſt les diſmes *ut ſupra:* et iſſint cheſcun pur ſon temps, et que l'advowſon ne unque fuit appropriate par le baron et ſa feme ne per l'anceſtor la feme. Et ne entendomus pas que l'Abbe vers eux qui furent eins per preſentment *ut ſupra,* en ceſt ple, et en ceſt Court Chreſtean devoit proceder. Et ſur ceo vindrent les avant dits R. & H. a le Chancelrie ove tout la mattere en un libelle a le Chanceler et prierent Prohibition ſur ceo matter; et il a eux fuit grante, et avoient. Et ſur ceo vient l'Abbe, et pria Conſultation. Et ceſt matter longement dependant en le Chancelrie, et ore il devient en l'Eſchequer Chambre devant les Juſtices de l'un Bank et de l'autre et le Chief Baron de l'Eſchequer et le Maiſtre des Rolles, et la le matter bien debate.

muſt be named. And the law is the ſame in the caſe of an action of "Forgery of deeds," which ſhall be brought by both; and ſo it ſeems to be in this caſe. The plaintiff denied the caſe of "Forgery of deeds;" for he ſaid that it ſhall be brought by the huſband omitting the wife. Which note. (And this matter was well argued; but I was not preſent at the beginning.) **Forteſcue:** The caſe of a "Quare impedit" is a good one to prove this caſe; and, Sir, in an action of "Detinue of charters," concerning the inheritance of the wife, it is true that the action ſhall be brought by the huſband and his wife, becauſe they are to recover the charters which touch the inheritance of the wife: but if a writ of "Treſpaſs" be brought for charters which touch the inheritance of the wife, this ſhall be brought by the huſband without the wife, becauſe it is not to recover the charters which concern the inheritance of the wife, but only damages for them; and ſo there is a diſtinction between theſe actions. (Note this.) Sir, if a tenant can have this action on the ſtatute, it ſeems then that the huſband can have it without the wife.—And it was adjourned. And on another day the plaintiff came to the bar, and prayed his judgment. (And the matter was argued over again; but I was not preſent.) And at the laſt the plaintiff had judgment to recover &c.

Hilary Term, 38 Hen. VI.

The caſe was thus, in the Chancery. An Abbat had ſued in Court Chriſtian a 1 16 b.
"Spoliation" againſt one R. clerk and one H. clerk, in that, whereas the ſaid Abbat and all his predeceſſors have been ſeiſed of the advowſon of J. and likewiſe of the church as Parſon imparſonee, to hold to their own uſe, from time of which the memory runneth not, and had had all the tithes &c., the ſaid R. and H. came and ſpoiled him of his tithes, and kept him out of his church, and took the tithes. And thereupon appeared the aforeſaid H. and R., and ſaid that ſuch an one was ſeiſed of the advowſon aforeſaid as in right of ſuch an one his wife, in his demeſne as of fee; and furthermore how the anceſtor of his wife was ſeiſed before him, and how the huſband preſented the ſaid R., who on his preſentation was admitted and inſtituted and inducted, and took the tithes and held the church as parſon and incumbent of the ſaid huſband, until he reſigned &c.: and then the ſaid huſband preſented the ſaid H., who on his preſentation &c., and held the church, and took the tithes as above: and ſo each one for his time: and that the advowſon was never appropriated by the huſband and his wife, nor by the anceſtor of the wife. And we do not think that the Abbat ought to proceed againſt them who were in by preſentation as above, in this plea and in this Court Chriſtian. And thereon came the aforeſaid R. and H. in the Chancery, with all the matter in a libel to the Chancellor, and prayed a "Prohibition" on this matter; and it was granted to them, and they had it. And thereupon came the Abbat and prayed a "Conſultation." And this matter was long pending in Chancery; and now it comes into the Exchequer Chamber before the Juſtices of both benches, and the Chief Baron of the Exchequer and

MARKHAM: Me ſemble que il n'aura Conſultation, &c. &c. [MOILE follows on the
f. 20. other ſide; and cites the Statute of Weſtminſter 2.] **Forteſcue** dit, que a la Comon Ley ſuit brief de Droit, *quod reddat advocationem decimarum de quinque acris terræ*, ou d'un acre de terre, *et hujuſmodi*, et pur ceo fuit le Statut fait: car brief de "Droit de Decimis" ne ſera grante de moindre parcele que *de quarta parte*, et pur ceo eſt le brief, *quod reddat advocationem decimarum quartæ partis vel tertiæ partis, et hujuſmodi*; et tiel brief ne fuit a la Comon Ley. *Quod non fuit contradictum. Quod nota.* [DANBY and YELVERTON
f. 20 b. follow.] PRISOT: Il ad eſte adjuge bon plede en "Quare impedit" vers le Prior, ou il tient Eſgliſe en propre oeps, adire que il fuit pleine ove luy meſme un an et jour devant le brief purchaſe come Parſon en parſonee, pur ceo que l'Eſgliſe ſera entendu pleine; et ſi l'Eſgliſe fuit loialment approprie, donque il eſt loialment pleine: purque ſemble que le "Quare impedit" giſt vers luy. **Forteſcue:** Matter en fait prove que "Quare impedit" giſt vers le Parſon enparſonee: car ils ſont ij ou iij "Quare impedit" pendant devant vous meſmes a certein jour (et noſme eux). Et en mon temps jeo ſcay que x ou xlj "Quare impedit" ont eſte retornes, et pur ceo le "Quare impedit" giſt aſſez bien: mes coment que il ne giſt, uncore reaſon prove que il n'eſt pleine, car le plede de plenerte que fuit a la Comon Ley eſt determine per le Statute de Weſtminſter ij et le pleding or done per meſne le Statut. Car a la Comon Ley il fuiſt bon ple adire que l'Eſgliſe fuit pleine jour de brief purchaſe: et or il n'eſt ple ſinon que il die que l'Eſgliſe fuit pleine de ſon preſentment demeſne vj mois devant le brief purchaſe; et iſſint il covient dire que ele eſt pleine de ſon preſentment demeſne; car ſi l'Eſgliſe ſoit pleine de preſentment d'un eſtranger, ceo n'eſt a purpos a abatre ſon brief, ſinon que il die de ſon preſentment demeſne vj mois devant le brief purchaſe; et icy il ne puit dire que l'Eſgliſe eſt pleine de ſon preſentment demeſne en ceo cas, pur ceo que il n'eſt pleine de nul preſentment, et pur ceo vers eſtrangers l'Eſgliſe ſera adjuge touts dits voide quant a ceo action. Et coment que ceo pleding que il voile alleger fuit en autre temps, uncore il ne fuit plede per reaſon, mes j'ay ſcay bien que il fuit tenu ple per long temps paſſe. *Quod nota.* Et donq il dit a luy que il n'aura "Conſultation," pur ceo que or le droit de l'avowſon viendra en debat, et le ple eſt d'entieres diſmes de l'Eſgliſe: et en touts caſes ou les diſmes qui amontent a la quartieſme part ou plus viendront en debat perenter les Parſons en Court Chreſtien, et ou ils ſont eins de divers preſentments en droit de divers Patrons, iſſint que le droit de Patronage vient en debat, donq giſt "Prohibition," et nul "Conſultation" ſera grante ſur ceo; car la ne giſt "Spoliation," mes "Spoliation" giſt ou un incumbent egette l'autre hors de ſa Eſgliſe, et prend les profits et le droit d'advowſon ne viendra en debat perentre eux. Si come un perſon eſt cree en Eveſque, et ad licence de le Pape a retenir ſon benefice, ſi or le Patron preſente un auter qui eſt receu,

the Maſter of the Rolls: and there the matter was well debated. MARKHAM: It ſeems to me that he ſhall not have a "Conſultation" &c. [MOILE follows on the other ſide, and cites the Statute of Weſtm. 2]. **Forteſcue** ſaid, that at the Common Law there was a writ of "Right" "that he reſtore the advowſon of the tithes of five acres of land," (or of one acre of land, and the like); and for this was the ſtatute made; for a writ of "Right of Tithes" ſhall not be granted of leſs parcel than the fourth part; and therefore the writ is, "that he reſtore the advowſon of the tithes of the fourth part;" or of the third part, and ſo on; and ſuch writ was not at Common Law.—And this was not contradicted. Which note. [DANBY and YELVERTON follow.] PRISOT: It has been adjudged a good plea in a "Quare impedit" againſt a Prior, where he holds a church to his own uſe, to ſay that it was full of himſelf, a year and a day before the writ was purchaſed, as Parſon imparſonee; becauſe the church ſhall be underſtood as full; and if the church was legally appropriated, then it is legally full; wherefore it appears that the "Quare impedit" lies againſt him. **Forteſcue:** Matter in fact proves that a "Quare impedit" lies againſt the Parſon imparſonee: for there are two or three "Quare impedits" pending before you on a certain day (and he named them). And in my time I know that ten or twelve "Quare impedits" have been returned; and therefore the "Quare impedit" lies well enough: but even if it does not lie, ſtill reaſon proves that it is not full; for the plea of plenarty which lay at Common Law is determined by the Statute of Weſtminſter 2 and the pleading now given by the ſtatute. For at the Common Law it was good plea to ſay that the church was full on the day of the purchaſe of the writ; and now it is not a plea unleſs he ſay that the church was full by his own preſentation ſix months before the purchaſe of the writ; and ſo he muſt ſay that it is full by his own preſentation; for if the church be full on the preſentation by a ſtranger, this is not ſufficient to abate the writ, unleſs he ſay that it was of his own preſentation ſix months before the purchaſe of the writ; and here he cannot ſay that the church is full by his own preſentation in this caſe, becauſe it is not full by any preſentation, and therefore, as againſt ſtrangers, the church ſhall be adjudged vacant always, as to this action. And although this pleading that he wiſhes to put forward was uſed in former times, ſtill it was not right pleading; but I know very well that for a long time paſt it has not been held good pleading. (Note this.) And then he told him that he ſhould not have a "Conſultation," becauſe now the right of the advowſon will come in debate, and the pleading is of the entire tithes of the church: and in all caſes where the tithes which amount to the fourth part or more ſhall come into debate between the parſons in Court Chriſtian, and where they are in by divers preſentations in right of divers patrons, ſo that the right of patronage comes into debate, then there lies a "Prohibition," and no "Conſultation" ſhall be granted thereon; for there, there lies no "Spoliation;" but "Spoliation" lies where one incumbent ejects the other out of his church and takes the profits, and the right of the advowſon ſhall not come into debate between them. As if a parſon is made biſhop, and has licence from the Pope

f. 20 b.

inſtitute et inducte, l'autre Parſon auroit "Spoliation:" car en ceo cas le droit l'advowſon ne viendra en debat, car ambideux incumbents claiment en le droit d'un Patron: mes le quel l'Eſgliſe devient voide, ou nemy, viendra en debat en ceſt eſpecial chaſe. Et meſme le Ley, i mon incumbent accept autres benefices: et pur ceo jeo preſente un novel qui eſt recu, inſtitute et inducte, ſi mon premier Parſon avoit licence pur avoir pluralite, il aura "Spoliation," et le pluralite viendra en debat la. Meſme la Ley eſt de deprivation, ou ſi un vient a moy, et ſurmet que mon Clerk eſt mort, ou il eſt en vie, et jeo luy preſente, l'autre aura "Spoliation:" et iſſint "Spoliation" giſt tout dits parenter les Parſons, ou ils 'ont colour par lour admiſſion, et ou le droit d'advowſon ne viendra par ceo en debat. *Quod omnes*
f. 21. *conceſſerunt.* Et iſſint lour Opinion cler en ceo cas, que le "Conſultation" ne giſt *cauſe ſupra.* Et iſſint fuit l'opinion de l'Maiſtre des Rolles, et il dit &c. &c. Et fuit dit, que le debat ſur la propriacion ſera trie en Court Chriſtien.

Forteſcue dit en action de "Treſpas," ſi le defendant juſtifie pur diſm es come Parſon, et done a le plaintif colour come Parſon d'un Eſgliſe adjoinant, ceo eſt a la Juriſdiction de ceſt Court, pur ceo que il appert que le droit des diſmes viendra en debat parenter Parſon et parſon; mes ſi le defendant juſtifie *ut ſupra*, et done al autre [autre] colour que come parſon, il ad done Juriſdiction a ceſt Court, pur ceo que il n'appert or par ceo pleder que les diſmes viendront en debat. Mes ſi en ſa replicacion il luy entitle come parſon a les bleds, pur ceo que il et ſes predeceſſors parſons ont eu tiele porcion des dimes hors de la paroiſſe le defendant come appropries a ſa Egliſe, or per ceſt ple, ſi ceo ſoit confeſſe de le defendant, le Court ſera ouſtre de Juriſdiction; iſſint tantoſt come il appert que le droit des diſmes viendra en debat, le Court ceſſera: en meſme le mannere le Chreſtien Court tantoſt come le droit d'avowſon viendra en debat, coment ceo ne appert adeprimes. *Quod nota; fuit conceſſum.*

f. 27 b. Treſpas en Bank le roy de puer ſon herbes et de ſon clos debruſe, et *Continuando tranſgreſſionem predictam, per viij annos.* Le defendant dit que le lieu ou &c. fuit ſon franktenement a le temps de la tranſgreſſion ſuppoſe, et il entra, et fiſt le tranſgreſſion! A quel le plaintif dit, que long temps devant que le defendant rien en avoit, un J. fuit ſeiſi en ſon demeſne come de fee, et iſſint ſeiſi leſſa meſmes les terres a un A. pur terme de ſa vie, par force de quel il fuit ſeiſi en ſon demeſne come de franktenement, et iſſint ſeiſi leſſa meſmes les tenements a un H. F. pur terme de vie le dit A. par force de quel il fuit ſeiſi &c. et iſſint ſeiſi devant le tranſgreſſion leſſa meſmes les terres a le plaintif a tenir a ſon volonte, par force de quel il fuit poſſeſſe tanque le defendant entra ſur luy le jour et an avandit, et luy ouſta, et diſſeiſit le dit H. F. et fiſt le treſpas, et puis tiel jour devant le brief purchaſe il reentra en claimant ſon eſtat: ove ceo que il veut averer que A. que fuit le primer

to retain his benefice, if now the patron preſent another, and he is received and inſtituted and inducted, the other parſon would have a "Spoliation." For in this caſe the right of advowſon will not come into debate, for both incumbents claim in right of one patron; but whether the church becomes vacant or not, ſhall come into debate in this ſpecial matter. And the ſame law holds if my incumbent accept other benefices, and I thereon preſent a new one, who is received and inſtituted and inducted; if my firſt parſon had licence to hold pluralities, he ſhall have a "Spoliation," and the plurality ſhall come into debate there. The ſame law holds of deprivation; or if one comes to me, and ſays that my clerk is dead, when he is alive, and I preſent him, the other ſhall have "Spoliation;" and ſo "Spoliation" lies always between parſons, where they have colour by their admiſſion; and where the right of advowſon ſhall not come thereby into debate.—And this all agreed to. And ſo their opinion was in this caſe that the "Conſultation" does not lie for the reaſon above given. f. 21
And this was the opinion of the Maſter of the Rolls; and he ſaid &c. &c. And it was ſaid, that the debate on the appropriation ſhall be tried in Court Chriſtian.

In an action of "Treſpaſs," **Forteſcue** ſaid, if the defendant juſtifies for tithes, as parſon, and gives colour to the plaintiff as parſon of an adjoining church, this is plea to the juriſdiction of this Court; becauſe it appears that the right to the tithes will come into debate between parſon and parſon: but if the defendant juſtifies, as above, and gives to the other colour otherwiſe than as parſon, he has given juriſdiction to this Court, becauſe it does not then appear by this pleading that the tithes will come into debate. But if in his replication he entitles himſelf, as parſon, to the corn, becauſe he and his predeceſſors, parſons, have had ſuch portion of the tithes out of the pariſh of the defendant, as being appropriated to his church, now by this plea, if it be confeſſed by the defendant, the Court ſhall be ouſted of juriſdiction; ſo, as ſoon as it appears that the right to the tithes ſhall come into debate, the Court ſhall ceaſe; and in like manner the Court Chriſtian, as ſoon as the right of advowſon comes into debate, although it did not appear at firſt. (*Quod nota;* and which was agreed to.)

Treſpaſs in the King's Bench, for treading down his graſs and breaking his cloſe, and f. 27 b.
continuing the ſame treſpaſs for eight years. The defendant ſaid that the place where &c. was his franktenement at the time of the ſuppoſed treſpaſs, and [when] he entered and committed the treſpaſs. To which the plaintiff ſaid that long before the defendant had anything therein, one J. was ſeiſed in his demeſne as of fee, and being thus ſeiſed, leaſed the ſame lands to one A. for term of his life, by force of which he was ſeiſed in his demeſne as of freehold, and being ſo ſeiſed, did leaſe the ſame tenements to one H. F. for the term of the life of the ſaid A., by force of which he was ſeiſed &c.; and being ſo ſeiſed, before the treſpaſs, did leaſe the ſame lands to the plaintiff to hold at his will, by force of which he was poſſeſſed, until the defendant entered on him the day and year aforeſaid, and ouſted him, and diſſeiſed the ſaid H. F. and committed the treſpaſs; and then on ſuch a day, before the purchaſe of the writ, he re-entered, claiming his eſtate; with this, that he will aver that A.

leſſee eſt uncore en pleine ire ; lequel mattere &c. Et le defendant maintint ſon barre, et traverſa le diſſeiſin come fuit dit (mes jeo ne fus la) : ſur que ilz furent a iſſue &c. ; et puis trove fuit pur le plaintif per un Niſi prius in Pais, et retourne or en Bank. Meſme le Terme CHOKE vient en Banke le roy et reherce tout le mattere, et dit &c. &c. . . . *Ad alium diem* LITTLETON pur le plaintif pria ſon Jugement. CHOKE : A le Jugement ne deves aller pur les cauſes avant dits ; car quant a le primer point quand il fuit ouſte et ſon leſſor diſſeiſiſt, donque fuit le volonte ſon leſſe determine, et quand il fuit un fois determine, il ne poit eſtre revive ſans l'entry le leſſor ; et uncore s'il entre il ſera dit novel leſſe a la ſouffrance de le leſſor apres ſon reentre, et l'entre le leſſee ne reconcilera franktement en le leſſor, car par le diſſeiſin le leſſe eſt determine : car il puit aver " [De] ejectione firmæ " vers le leſſor, et recovera ſon terme ; mes iſſint ne puit le leſſee a volonte ; donque quand il reentra, il entra ſans title. Purque. Et Sir, quant a le ij point il n'ad allege la vie H. F., en quel cas il ſera pris plus fort encontre luy que il eſt mort, et donque ne puit il tenir a volonte
f. 28 H. F. quand il eſt mort ; en quel cas quand H. F. aura l'eſtat, il covient avoir allege la vie H. ſibien come la vie A., car ambideux font ſon title ; et s'il ſoit mort, ſon title eſt determine. LITTLETON : Me ſemble le contrary. . . . . BINGHAM : Quant a le primer point, me ſemble que ceo entrie fuit loyal . . . . **Fortescue :** S'il ſoit eins en le primer poſſeſſion apres le mort H. F., ſemble que durant la vie A. il punira touts treſpaſſes, come BINGHAM ad bien dit : mes ſemble a moy que le plaintif aura ſon Jugement pur recoverer, et le plus fort que eſt dit que il n'aura ſon Jugement, eſt, pur ceo que per ſon entrie le Franktenement n'eſt recontinue en ſon leſſor. Sir, ceo eſt le plus fort pur luy a prover ſon action bon : car s'il ſoit ouſte, et il ne recontinue ſon eſtat, paradventure il eſt reaſon adonque que il maintene ſon action ſans aſcun entre. Car le cauſe que le diſſeiſee n'aura brief de " Treſpas " durant le diſſeiſin, eſt, pur ceo que il poit recontinuer le Franktenement a luy pur action ou entre, et donque n'eſt reaſon a charger le diſſeiſor pur la ſeiſin tanque il ad recontinue le principal, ſcavoir, le franketenement : mes icy vous dites que per ſon entrie il ne poit recontinuer le franktenement a le leſſor, donque il eſt reaſon que il maintene ſon action ſans entrie ; donque ceo prove l'entrie come void, et ſicome il n'uſt rien parle de ſon entrie donque eſt le matter tiel que le plaintif fuit poſſeſſe per force de le dit leas a volonte tanque le defendant luy ouſta, et diſſeiſiſt ſon leſſor ; en quel cas il eſt reaſon que il recovera pur ſon egettement envers le diſſeiſor ſans aſcune entre : car ſi on ſoit diſſeiſi, il recovera damages pur le treſpas fait ſur le diſſeiſee ſans aſcune reentrie. Purque. W. JENNEY dit : Coment que il recovera ſes damages pur le primer entrie, uncore il ne recovera damages pur le treſpas fait apres le continuance ſans reentre, et le brief eſt *continuando tranſgreſſionem prædictam per octo annos.* **Fortescue :** Si le tenant a volonte emble ſa terre, et puis ſoit

who was the firſt leſſee, is ſtill living; which matter &c. And the defendant maintained his bar, and traverſed the diſſeiſin; (as was ſaid, but I was not there;) whereupon they were at iſſue &c.; and then it was found for the plaintiff by a Niſi Prius in Pais; and now it was returned into the Bench. In the ſame Term, CHOKE came into the King's Bench and rehearſed all the matter, and ſaid &c. &c. . . . . On another day LITTLETON for the plaintiff prayed his judgment. CHOKE: To judgment you ought not to go, for the reaſons above ſaid; for as to the firſt point, when he was ouſted and his leſſor diſſeiſed, then the will of his leaſe was determined, and when it was once determined, it could not be revived without the entry of the leſſor; and ſtill if he enter, it ſhall be called a new leaſe at the ſufferance of the leſſor, after his re-entry; and the entry of the leſſee ſhall not replace the freehold in the leſſor; for by the diſſeiſin the leaſe is determined: for he can have "De ejectione firmæ" againſt the leſſor, and recover his term; but the leſſee at will cannot do ſo; thus when he re-entered he entered without title. Wherefore &c. And Sir, as to the ſecond point, he has not alleged the life of H. F.; in which caſe it ſhall be taken ſtrongeſt againſt him that he is dead; and then, he cannot hold at the will of H. F. when he is dead; in which caſe, when H. F. is to have the eſtate, he ought to have alleged the life of H. as well as that of A.; for both make his title; and if he be dead, his title is determined. LITTLETON: I think the contrary. . . . . BINGHAM: As to the firſt point, it ſeems to me that this entry was legal. . . . . **Forteſcue:** If he be in as of the firſt poſſeſſion after the death of H. F., it ſeems that during the life of A. he ſhall puniſh all treſpaſſes, as BINGHAM has well ſaid; but it ſeems to me that the plaintiff ſhall have his judgment to recover; and the ſtrongeſt argument againſt his having his judgment is, becauſe by his entry the freehold is not recontinued in his leſſor. Sir, this is the ſtrongeſt point for him whereon to prove his action good; for if he be ouſted, and he does not recontinue his eſtate, perhaps it is right then that he maintain his action without any entry. For the cauſe that the diſſeiſee ſhall not have writ of Treſpaſs during the diſſeiſin is, becauſe he can recontinue the freehold to himſelf by action or entry; and thus there is no reaſon to charge the diſſeiſor for the ſeiſin until he has recontinued the principal, that is, the freehold; but here you ſay that by his entry he cannot recontinue the freehold to the leſſor; thus it is right that he maintain his action without entry; then this proves the entry as void, and as if he had not ſpoken of his entry: then the matter is in this poſition, that the plaintiff was poſſeſſed by force of the ſaid leaſe at will until the defendant ouſted him, and diſſeiſed his leſſor; in which caſe it is right that he ſhall recover, for his ejectment, againſt the diſſeiſor without any entry: for if one be diſſeiſed, he ſhall recover damages for the treſpaſs made on the diſſeiſee without any re-entry. Wherefore &c. W. JENNEY ſaid: Although he recover his damages for the former entry, ſtill he ſhall not recover damages for the treſpaſs committed after the continuance, without re-entry; and the writ is, "continuing the ſame treſpaſs for eight years." **Forteſcue:** If the tenant at will ſow his land, and then be

ouſte, il aura action de Treſpas de l'enpriſe de ſon emblement, coment que il ſoit empris un an apres le ouſtre de luy. JENNEY: C'eſt voier de l'emblement, pur ceo que il fuit de ſon manuel labour: mes iſſint n'aura il des herbes ne d'auters choſes que creſſent par eux meſmes
f. 28 b. ſans manuel labour de home; et enſement les herbes qui creſſent ij ans ou trois apres la ſuite ſur la terre, ne furent *in eſſe* a le temps del ouſtre: purque de ceo n'eſt reaſon que il aura action. YELVERTON: Le tenant a volonte aura action de Treſpas ſans reentrie, et de le continuance tanque le leſſor ad determine ſa volonte, come per releas fait a le diſſeiſor, *et hujuſmodi*, qui prove ſa volonte determine. *Quod* **Fortescue** *negavit*, et dit que il n'aura action. Et ouſtre il dit, En ma Opinion le diſſeiſee n'aura action de Treſpas de la diſſeiſin fait a luy ſans aſcun reentrie. **Fortescue** dit, que il n'aura action de Treſpas fait apres le diſſeiſin ſans recontinuer de le franketenement. Et puis *ex aſſenſu* &c., YELVERTON done Jugement pur le plaintif. JENNY diſoit: Sir, jeo vous moverai de le ſecond point. *Et noluit eum audire*, mes done le Jugement. (*Quære* le cauſe que ils ne prindrent plus conſideracion al ſecond point.)

De Termino Paſchæ, Anno xxxviij. HEN. VI.

f. 29. Nota, que **Fortescue** en l'Eſchequer Chambre devant Touts les Juſtices de l'un Bank et de l'auter diſoit que ſi un home s'affie que il paiera a un auter xl*s.* a certain jour, a quel jour il ne paie pas, ſi le party luy ſue en Court Chreſtien *pro læſione fidei* que il aura "Prohibition," pur ceo que ils ne poient tenir ple ſur le principal. Et meſme le Ley ſi un ſera affie a faire un feoffment par tiel jour, a quel jour il n'ad pas fait le feoffment, s'il ſoit ſue en Court Chreſtien *pro læſione fidei*, il aura "Prohibition" *cauſa qua ſupra;* car ceſt ſuite eſt en maner compulſion a faire le party a performer une acte qui touche le Court le Roy, et le conuſance de ceſt choſe append a la Court le Roy, et a nul auter Court; donque pur punir le party *pro læſione fidei* de choſe dont conuſance append a la Court le Roy, et nemy a eux, ſera encontre reaſon. *Quod fuit conceſſum per Aſcuns et nullus contradicit. Quod nota. Et concordat dicto* HANKFORD *Trinitatis* 11 Hen. 4 en un "Prohibicion" ſur tiel matter &c.

f. 30 b. En l'Eſchequer Chambre devant les Juſtices de l'un Bank et de l'auter, CROKE reherce le matter coment un tiel avoit porte brief d' "Entrie in conſimili caſu" vers un tiel, ſuppoſant par ſon brief que le tenant n'avoit entre ſinon per le demis un tiel qui tient pur terme de ſa vie, qui aliena en fee a un tiel. Qui dit que il n'aliena pas en fee, preſt. *Et alii e contra.* Et trove pur le tenant, ſcavoir, que il ne aliena pas en fee: et ſur ceo le

ouſted, he ſhall have action of treſpaſs for the taking of his emblements, although it be taken a year after the ouſter. JENNEY: It is true of the emblements, because it was of his manual labour; but he ſhall not in the ſame way have damages for the graſs and other things which grow of themſelves without manual labour of man; and likewiſe, the graſs which grew on the land two or three years after the ſuit, was not in exiſtence at the time of the ouſter; wherefore there is no reaſon that he ſhall have action in reſpect thereof. YELVERTON: The tenant at will ſhall have an action of Treſpaſs without re-entry, and for the continuance; until the leſſor has determined his will, as by releaſe made to the diſſeiſor, and ſuch like things which prove his will determined. And this **Forteſcue** denied, and ſaid that he ſhall not have an action. And furthermore he ſaid, In my opinion the diſſeiſee ſhall not have an action of "Treſpaſs," for the diſſeiſin done to him, without any re-entry. **Forteſcue** ſaid that he ſhall not have an action for treſpaſs committed after the diſſeiſin without a recontinuer of the freehold. And then by aſſent &c. YELVERTON gave judgment for the plaintiff. JENNY ſaid: Sir, I will move you on the ſecond point.—And he would not hear him, but gave judgment. (*Quære* the reaſon why they did not take more conſideration on the ſecond point.)

Eaſter Term, 38 HEN. VI.

Note, that **Forteſcue** in the Exchequer Chamber, before all the Juſtices of both benches, ſaid, that if a man undertakes to pay to another forty ſhillings on a certain day, and on that day does not pay; if the party ſue him in Court Chriſtian for "breach of faith," he ſhall have a "Prohibition," becauſe they cannot entertain a plea on the principal matter. And the ſame law holds if one undertake to make a feoffment by a certain day, and on that day do not make the feoffment, if he be ſued in Court Chriſtian for "breach of faith," he ſhall have a "Prohibition" for the reaſon above; for this ſuit is in a manner a compulſion to make the party perform an act which concerns the King's Court; and the cognizance of this matter belongs to the King's Court, and to no other Court; and ſo to puniſh the party for breach of faith in reſpect of a matter the cognizance whereof belongs to the King's Court and not to them, would be againſt reaſon. And this was agreed to by ſome, and no one diſſented. (*Quod nota.*) And this agrees with what HANKFORD ſaid in Trinity Term, 11 Hen. IV., in a "Prohibition" on a like matter &c. f. 29.

In the Exchequer Chamber before the Juſtices of both benches, CHOKE rehearſed the matter, viz. how ſuch an one had brought writ of "Entry in conſimili caſu" againſt ſuch an one, ſuppoſing by his writ that the tenant had not entry except by the demiſe of ſuch an one who held for term of his life, who alienated in fee to ſuch an one; who (i. e. the tenant) ſaid that he did not alienate in fee; ready &c.; and the other ſide the contrary. And it was found for the tenant, namely, that he did not alienate in fee. And thereupon the demandant has brought a writ of "Error;" and he aſſigns for error that whereas the tenant ſaid that he did f. 30 b.

demandant ad porte brief d'Error, et aſſigna pur errour que l'ou le tenant dit que il ne aliena pas en fee, le quel ne fuit pas ple, et pur ceo que le demandant prift l'iſſue ſur ceo ple, ſcavoir que il aliena en fee, ils errerent. Et ceſt matter bien debate en Bank le Roy per certeins Termes. PRISOT dit, que il ne ouit unques de ceo, et dit que il ſcavoit bien que il ne fuit unques argue la. *Quod ſocii ſui concedunt.* Mes DAVERS dit, que le Jugement fuit done *ex aſſenſu Partium.* **Forteſcue:** Il n'ad eſte tenu ple en nos livres adevant; mes entant que il eſt or eſtre adjuge, ſi nous puiſſions trover bon reaſon que il ſera ple, il eſt reaſon que nous affirmons le Jugement. Et puis il dit a Brown le Clerk, que il lira le record. Et le count fuit veu, et il appert per le count que le cas fuit tiel, que un eſtranger fuit ſeiſi, et leſſa a un tiel pur terme de vie, le remainder a le pere le demandant en tail, et que le tenant a terme de vie aliena en fee a ceſtuy or tenant. Et le brief fuit, que le tenant n'ad entre ſinon per le demis de un tiel, que tient pur terme de vie de le demandant *ex aſſignatione* le leſſor fait a luy en fee. **Forteſcue:** Ceſt brief eſt faux per le matter monſtre, ſcavoir que le tenant a terme de vie tient de le demandant *ex aſſignatione* le leſſor: car le tenant ne poet tenir de le demandant *ex aſſignatione* mes ou il ad le revercion par grant, et nemy per remainder: mes s'il tient de demandant par remainder, il ſera *ex dimiſſione.* Et par ceux caſes et auters qui appert a eux ou overtement ils tenent clerement, que le brief ne vault. Purque. CHOKE dit, que entant que le brief ne vault, vous ne procedes pas a arguer
f. 31. ſes errors aſſignes a or: car il ſera en vain quand l'original ne vault. . . . *Quod fuit conceſſum per omnes.* Et iſſint l'opinion que le brief abatera. Purque **Forteſcue** dit a eux, que ils venent en Bank le Roy devant eux a avoir lour Jugement ſur labatement de brief, et pur le reverſer de ceo &c.

FINIS.

not alienate in fee, which is no plea, and becauſe the demandant took the iſſue on that plea, viz. that he did alienate in fee, they erred. And this matter was well debated in the King's Bench in certain terms. PRISOT ſaid that he never heard of this; and that he knew well that it was never argued there. (And this his companions agreed to.) But DANVERS ſaid that judgment was then given by aſſent of the parties. **Forteſcue:** Never heretofore in our books has it been held as a plea: but inaſmuch as it is now to be adjudged, if we can find a good reaſon that it ſhall be a plea, it will be right that we affirm the judgment. And then he told BROWN, the Clerk, to read the record. And the count was looked at; and it appeared by the count that the caſe was this;—that a ſtranger was ſeiſed, and leaſed to ſuch an one for term of life, with remainder to the father of the demandant in tail; and that the tenant for life alienated in fee to him who is now tenant. And the writ was, "that the tenant "had not entry except by the demiſe of ſuch an one, who held for the term of the life of the "demandant by the aſſignment made by the leſſor to him in fee." **Forteſcue:** This writ is falſe by the matter ſhown, viz. that the tenant for term of life holds of the demandant "by the aſſignment" of the leſſor; for the tenant cannot hold of the demandant by aſſignment, except where he has the reverſion by grant, and not by way of remainder; but if he holds of the demandant by remainder, it ſhall be "by the demiſe."—And by thoſe caſes, and others which appear plain to them, they clearly held that the writ was bad. Wherefore &c. CHOKE ſaid: Inaſmuch as the writ is bad, you cannot now proceed to argue his errors aſſigned; for this will be in vain when the original is bad. . . . And all agreed to this. And ſo the f. 31.
opinion was that the writ ſhould abate. Wherefore **Forteſcue** told them to come into the King's Bench before them to have their judgment on the abatement of the writ, and for the reverſal thereof &c.

THE END

SIR JOHN FORTESCUE'S LIFE AND WORKS.

CORRIGENDA.

THE name of Faithorne is in two places in the Preface p. xxiv. ſpelt "Faithone." Although the engraver inſcribed his name on the plate of Chancellor Forteſcue's portrait without an "r," he uſually inſerted that letter, and it is more correctly ſpelt "Faithorne."

In the Life of Chancellor Forteſcue, at page 16, a note to Selden's Preface by Francis Gregor the editor of the edition of "De Laudibus Legum Angliæ" printed in 1737, is quoted as if it were by the writer of the Preface, who died in 1654.